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Abstract: This research aims to control and verify the concept of abuse of rights within the Common European Asylum System (CEAS) as a legal foundation that represents the provisions for the limits and access to the right of asylum. The notion of the right to asylum through the jurisprudence of the Court of Justice of the European Union (CJEU) has manifested the abuse of law as a concept of law of the Union through the perspective of international law that deepens from a subjective point of view and identifies its legal position. From an objective point of view, the definition of the same content in the topic of abuse of rights, within the system of the CEAS seeks to identify the prohibition of abuse through application results where the abusive conduct grants the right of asylum in the status and to individual level, as two distinct patterns responsible for abuse at domestic and European level. We must investigate the legal basis for the

abuse of rights in the context of the CEAS by evaluating and checking the legislative instruments that in recent years continue to place limits on the exercise of the right to asylum. These are justified exclusively through the European institutions as a ratio that lays the foundations for legal instruments that seek to regulate this sector.

Keywords: CEAS; abuse of rights; asylum; CJEU; CFREU; ECtHR; ECHR; qualification Directive; Dublin regulation; asylum shopping; abusive rule avoidance; abusive rule appropriation; safe country of origin; country of first asylum; safe third country; Directive qualifications; anti-abusive clauses; international protection on site; procedure directive; reception directive; Regulation Dublin III; non-refoulement.

Introduction

The abuse of rights in the law of the European Union finds application to specific rules of the Union, by domestic laws and in substantive and procedural aspects based on the Common European Asylum System (CEAS). The concept of abuse includes some particular points of reference: - the notion of abuse is evaluated by European judges through the jurisprudence of the Court of Justice of the European Union (CJEU); -it is called the European legislation even if it is not

very precise and includes all the policies of the Union in realization with the abuse, therefore, thus excludes national law and makes the legislation applicable to a different state in an advantageous way; - behaviors and rules show the superiority of the law of the Union, thus respecting the objective of the same provision.

Based on this notion and principle of the abuse of rights is the tendency to give greater importance to the interests of the individual Member States of the Union and to the related internal legislation. Of course, jurisprudence places limits on the application and prohibition of abusive practices where many times it was seen the involvement of the European Court of Human Rights in taking a stand for forms of abuse by exploiting the legislation of the Union and making applicable and favorable the elements that respect the application of the law of the Union, especially the anti-abuse clauses. Many times the CJEU takes a position on the abuse of law as a qualified and comparable right to the general principle by implementing objective presuppositions of a certain provision where the abusive nature of the conduct ensures the established parameters of elaborate tests as it was seen in the Emsland-Stärke case[1].

This work will be “restrictive” in the abuse of asylum law and in all the legal instruments that compose it. Tools that control,

1CJEU, C-110/99, Emsland-Stärke of 14 December 2000, ECLI:EU:C:2000:695, I-11569.

evaluate but do not examine the concept of abuse, highlighting that the anti-avoidance ratio through a teleological interpretation prepares objectives for its adoption towards a systematic interpretation where the concept of abuse of rights is linked to a perspective that configures the operation of a legal system category of abuse with a view to verifying the conclusions which are confirmed and a path of jurisprudential analysis as qualifying conduct, which can be presented through various concepts of the right to asylum which identify the holder of the right as a principle, i.e. the person responsible for the abuse and who seeks regulatory protection from both the legislator and the asylum seeker.

Abuse of the right to asylum through European legislation

The right to asylum and the right to abuse are connected to the legislative system of the CEAS and in the perspective that privileging normative legal institutions in the European asylum system allowing the entire asylum system to take into consideration orientations provided by Art. 68 TFEU (Blanke, Mangiamelli, 2021), i.e. the proposals of the European Commission and the evolution of a European asylum system of a common nature through the adoption of regulatory instruments of the CEAS reconstructing the ratio of rules that are connected with the concept of abuse of rights. The legal instruments are the

Qualifications Directive, the Procedures Directive, the Reception Directive and the Dublin III regulation as institutions that respect and simultaneously identify the behavior of the subject and the application of abuse which emerges as an anti-evasion ratio.

The references to the abuse of institutional and internal documents have not led to the creation of a common European asylum system which takes into consideration the competences that began in Tampere in 1994 without, however, precise references to the abuse. The years pass and the recognition of refugee status towards agreements of a single and uniform asylum system for refugees based on the European Commission proposal carries out checks on abuses and introduces anti-abuse mechanisms which are linked to the same principle of asylum and which imply conduct that evades a direct system that protects the right to asylum.

Program of the Hague linked the prevention of abuse with the functioning of an asylum system within the Green Paper on the future Common European Asylum System of 2007 (Goudappel, Raulus, 2011)[2] which was presented by the Commission seeking:

2Green Paper on the future Common European Asylum System (presented by the Commission), COM(2007) 301 final, 6 June 2007: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A52007DC0301

"(…) the possible choices to define the second phase of the creation of the common European asylum system, according to the action plan outlined within the Hague Programme[3] (…) adopt an integrated approach and overall asylum policy, and work to improve all aspects of the asylum process, from the moment people seek access to protection in the EU, through to finding a lasting solution for those in need of international protection (...) considers it essential to equip the national administrations responsible for asylum with adequate tools that enable them to effectively manage the flows of asylum seekers and to concretely prevent fraud and abuse, to safeguard integrity and credibility of the asylum regime (...)[4] the aim that the green paper intends to pursue consists in establishing medium and long-term objectives, which (...) go beyond what has already been proposed [within the Hague Programme] and examining new sectors to which it would be advantageous to extend practical cooperation between Member States, exemplifies some possible actions to be adopted to achieve greater approximation of practices (...) identify and prevent fraud and abuse (...) the reference to abuse made in these terms suggests the existence of diversified anti-avoidance practices developed by individual Member States, with respect to which greater harmonization is required (…)"[5].

Of the same spirit is the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions of June 2008 (Mouzourakis, 2014)[6], where it was established that:

3Hague Programme, Strengthening Freedom, Security and Justice in the European Union, OJ C 53, 3 March 2005, pp. 1-14: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52005XG0303%2801%29

4Green Paper on the future Common European Asylum System (presented by the Commission), op. cit., "(…) (1) enable those seeking protection in the EU to apply, assert their rights and have their personal needs addressed in better conditions, and (2) strengthen the capacity of all parties involved in the asylum process to carry out their tasks efficiently, to improve the overall quality of the process (…)".

5Green Paper on the future Common European Asylum System (presented by the Commission), op. cit.

6Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategic plan on asylum: an integrated approach to protection in the European Union, COM(2008) 360 final, 17 June 2008, pp. 1-12: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52008DC0360

"(...) ensure high standards of protection throughout the asylum procedure, from the moment of reception of asylum seekers until the full integration of the people who have obtained protection, while guaranteeing the integrity of the system through the prevention of abuse (…)".

From the Stockholm Programme[7]:

"(...) the topic of abuse not only officially becomes part of the interinstitutional dialogue (...) it begins to be expressly mentioned in the texts defining the political lines to be followed in the construction of the asylum system[8] (...) the reference is explicit to the need to adopt fair and effective procedures that allow abuse to be prevented[9] (...) alongside high standards of protection. Furthermore, in this context, the issue of abuse of asylum systems is also linked to the need to set up an efficient mechanism for sharing responsibilities between Member States, with a view to avoiding a possible compromise of the principles of the CEAS (...)"[10].

The First Annual Report on Immigration and Asylum[11] has evaluated the European Pact on Immigration and Asylum which

7Stockholm Programme, An open and secure Europe serving and protecting citizens, adopted by the European Council of 11 December 2009, OJ EU C 115, 4 May 2010, pp. 1-38: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:115:0001:0038:en:PDF

8Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Creating an area of freedom, security and justice for European citizens – Action plan for the implementation of the Stockholm programme, COM (2010) 171 final, 20 April 2010: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2022%3A230%3AFIN

9Stockholm Programme, An open and secure Europe serving and protecting citizens, adopted by the European Council of 11 December 2009, op. cit., par. 6.2: "(…) a) carefully monitor the implementation and application of the rules in question to avoid abuse and fraud, [b)] examine what is the best way to exchange information, including relating to residence permits, and documentation and how can assist the authorities of the Member States to effectively combat the abuse of this fundamental principle (…)".

10Stockholm Programme, An open and secure Europe serving and protecting citizens, adopted by the European Council of 11 December 2009, op. cit., par. 6.2, op. cit., The European Council of Heads of State and Government which met in Ypres on 26-27 June 2014 decided to continue the same objectives for the European area of freedom, security and justice after the Stockholm Program as well as to continue the action of the Union for the next few years: 2015-2020

11Report from the Commission to the European Parliament and the Council, First annual report on immigration and asylum, COM(2010) 214 final, 6 May 2010: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52010SC0535

was adopted in October 2008. The Commission:

"(...) underlines the rationale, consisting in the intention to simplify, rationalize and consolidate the substantive and procedural rules on protection throughout the EU and to make decisions at first instance more solid, thus preventing abuse and making it more effective the asylum procedure (…)"[12].

The Fourth Annual Report on Asylum[13]:

"(…) refers to the content of the note adopted by the Council on 23 April 2012[14] (...) identifying six main strategic areas of intervention[15], in order to tackle irregular migration, while ensuring compliance of fundamental rights, also includes the need to combat abuses of legal migration channels (...) preserve free movement by preventing abuses by citizens of third countries (...) related to the issue of immigration, end up "invading the field" of the recognition of the right of asylum when, for example, there is a prospect (...) of the establishment of a suspension mechanism that allows the rapid temporary suspension of the visa exemption for a third country in case of sudden and significant abuse of asylum procedures (…)"[16].

Continuing with the European Agenda on Migration, which was adopted by the Commission in 2015[17], it is affirmed that:

"(...) adopting an essential body of measures and a clear and coherent common policy on asylum, identifies, among the priorities, the definition of a more effective approach to abuse (...) highlights the high percentage of

12 Report from the Commission to the European Parliament and the Council, First annual report on immigration and asylum, op. cit.

13 Communication from the Commission to the European Parliament and the Council, Fourth Annual Report on Immigration and Asylum (2012), Brussels, COM(2013) 422 final, 17 June 2013: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:52013DC0422

14 Note from the Presidency of the Council of the European Union, EU action on migratory pressures-A strategic response, 23 April 2012.

15 The sectors of intervention that are referred to are the following: -cooperate and strengthen relations with third countries for transit and migration management; -improve the management of domestic and external borders; -prevent illegal immigration via the Greek-Turkish border; improve management in the migration sector through the related repatriations.

16 Note from the Presidency of the Council of the European Union, EU action on migratory pressures-A strategic response, op. cit.

17 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda on Migration, COM(2015) 240 final, 13 May 2015: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52015DC0240

asylum applications that gave rise to negative decisions, linking this fact to the risk for Member States of not being able to ensure rapid protection to those who actually need it (…)"[18].

The Commission informed on 23 September 2020 and noted the challenge towards abuses as objectives pursuing a comprehensive European approach to migration and asylum management.

The evolution and birth of asylum policy has also entered the scope of the programmatic documents as legal instruments of the CEAS, which moves in the direction of continuous proposals from the European Commission and in the legal instruments of the CEAS where the control and analysis of proposals bring the first generation to the European asylum table as well as proposals for legal instruments that arrive and are included in the new migration and asylum pact.

The protection status of the first generation CEAS had as its objective:

"(…) to guarantee a high level of protection to those who objectively need it, while preventing the abusive use of asylum applications which compromises the credibility of the system, often to the detriment of asylum seekers who really need protection[19] (...) the need has been identified to avoid forms of abusive conduct on the part of asylum seekers, so as to ensure the correct maintenance of the system (...) it is foreseen with reference to notion of "family member" (article 2 of the proposed Directive), which can include, in

18Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, European Agenda on Migration, op. cit.

19Proposal for a Council Directive on rules on the qualification of third-country nationals and stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of the protection status, COM(2001) 510 final, 26 February 2002, par. 4.: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A52001PC0510

addition to the spouse, also the cohabiting partner (even of the same sex) of the applicant (...) equates unmarried couples with married ones from a legal point of view (...) the provision is not aimed at producing an effective harmonization of national rules regarding the recognition of unmarried couples, but simply allows the principle of equal treatment to be applied, it is required that unmarried partners conduct a stable relationship, supported by evidence of cohabitation or reliable testimonies, precisely in order to prevent any abuse (...)"[20].

Similar provisions are oriented to prevent abuse through the proposal for Directives that deal with the reception conditions of asylum seekers (Slingenberg, 2014; Trauner, Ripoli-Servent, 2014)[21]. Proposals that are covered by a specific group of rules, provisions that reduce, revoke access to reception conditions for all and as a consequence bring proceedings to justice through a decision that reduces, revokes reception conditions and prevents abuses in the reception system reception except the review of related decisions[22].

The proposal for a Directive containing minimum standards for the procedures applied in the Member States for the purposes of recognizing and revoking refugee status[23] did not make any

20 Proposal for a Council Directive on rules on the qualification of third-country nationals and stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of the protection status, op. cit.

21 Proposal for a Council Directive on minimum standards for the reception of asylum seekers in the Member States, COM(2001) 181 final, 31 July 2001, para. 3, letter. d): https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2001:0181:FIN:EN:PDF

22 See recital n. 14: "(…) possible abusive exploitation of the reception system must be combated by providing for the reduction or revocation of the reception conditions of asylum seekers for justified reasons (…)".

23 Proposal for a Council Directive on minimum standards for the procedures applied in Member States for the recognition and withdrawal of refugee status, COM(2000) 578 final, 27 February 2001: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?

mention and/or use of abuse and the related provisions allowed the anti-evasion ratio that was connected with the need to limit secondary movements and asylum seekers from one Member State to another. Thus, the practices used:

"(...) inadmissible applications, manifestly unfounded applications, safe country of origin, safe third country existing in many Member States and regulated in a different way that the commission hoped for the adoption of common rules".

In particular, art. 28 was responsible for introducing the application regime for applications that are unfounded, i.e.:

"(...) fraudulent or not relevant to the criteria for the recognition of refugee status pursuant to the Geneva Convention[24] (...) regulate the applications fraudulent in terms of the identity and nationality of the applicant, in relation to which the applicant has provided false information, such as to substantially compromise the credibility of an application (...)"[25].

Therefore, there is no reference to abuse, to the concept of fraud and to the use of false documentation.

With the adoption of the Dublin II regulation[26], the specific objectives of the Stockholm program are repeated, which prevented the abuse of asylum procedures by trying to control:

uri=COM:2001:0510:FIN:EN:PDF

24 UNHCR, Executive Committee of the High Commissioner's Programme, The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, Conclusion No. 30 (XXXIV), 20 October 1983, contained in United Nations General Assembly Document No. 12A (A/38/12/Add.1).: https://www.unhcr.org/media/executive-committee-conclusion-problem-manifestly-unfounded-or-abusive-applications-refugee

25 UNHCR, Executive Committee of the High Commissioner's Programme, The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, Conclusion No. 30 (XXXIV), 20 October 1983, op. cit.

26 Proposal for a Council Regulation establishing the criteria and mechanisms for determining the Member State responsible for examining an application for asylum lodged in one of the Member States by a third-country national, COM(2001) 447 final, 30 October 2001: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2001%3A0447%3AFIN

"(...) phenomenon of multiple asylum applications presented by the same person, simultaneously or at a later time, in different Member States for the sole purpose of prolonging his stay in the European Union (...) with a view to outlining the type of conduct which, in the Commission's perspective, takes on the characteristics of abusiveness which deserve to be counteracted through specific provisions (...) some conduct defined as "fraudulent" is taken into consideration, relating, in particular, to the counterfeiting of documents, such as a visa or a residence document, which, if issued by a specific Member State, are rooted therein the competence to carry out the subsequent examination of the asylum application (...) threshold beyond which the fraud carried out by the asylum seeker can be considered relevant with a view to a change of competence: it must be demonstrated that the fraud consists of a substitution or a counterfeit occurred after the issue of the aforementioned document (...)"[27].

What are the legal instruments of the CEAS today?

The Stockholm Program and the Treaty of Lisbon created a common asylum system for the adoption[28] of a policy on asylum, subsidiary and temporary protection according to common and uniform rules and to Art. 67, par. 2 TFEU (Blanke, Mangiamelli, 2021), as a model that was based on minimum standards.

In particular, in the proposal to amend the Procedures Directive (Lopatin, 2013)[29], the Commission revealed the problems that

27 Comment on article 9, par. 5 of the proposed Regulation: "(…) the residence document or visa has been issued to a third-country national who has declined a false or usurped identity or upon presentation of falsified, counterfeit or invalid documents, does not preclude the attribution of competence to the Member State that issued it (…) the state that issued the residence document or visa is not competent if it can prove that the fraud occurred after it was issued (…)".

28 European Pact on Immigration and Asylum, approved on 16 October 2008 by the Heads of State and Government of the Member States (COM(2008) 360 final): https://eur-lex.europa.eu/EN/legal-content/summary/european-pact-on-immigration-and-asylum.html

29 Proposal for a Directive of the European Parliament and of the Council on

were connected with the "minimum standards" on the matter. These rules were considered insufficient and vague and did not have the necessary potential to guarantee the relevant fair and efficient process.

The proposal to amend the Procedures Directive took into consideration the relevant content of the Strategic Plan on Asylum[30]:

"(...) ensure a higher level of harmonization and better international protection standards across the Union, to create greater coherence between EU asylum instruments, simplify, streamline and consolidate procedural regimes across the Union and enable more robust first instance decisions, with a view to achieving a dual purpose: preventing abuse and improving the effectiveness of asylum procedure[31] (…) identified a series of measures deemed indispensable to prevent abuse and preserve the integrity of asylum systems (…) Member States' concerns about repeated and manifestly unfounded applications[32] (…) reasons for inadmissibility, including the concept of safe third country, accelerated procedures, the concept of safe country of origin (...) manifestly unfounded applications and the notion of

minimum standards for procedures applied in Member States for the purposes of granting and withdrawing international protection (recast), COM(2009) 554 final, 21 October 2009: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52009PC0554

30 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategic plan on asylum: an integrated approach to protection in the European Union, COM(2008) 360 final, op. cit.

31 Par. 3 of the proposal: "(...) improving applicants' knowledge regarding the applicable criteria and thus leading to greater compliance with procedural obligations (...) quality of the decision-making process, including, among others, the methods of personal interview and The provisions on expert advice and training should improve the preparation of competent staff in promptly identifying exploitative or fraudulent applications. To further support these measures, the principle of a single determining authority is underlined (...)".

32 Proposal for a Directive of the European Parliament and of the Council on minimum standards for procedures applied in Member States for the purposes of granting and withdrawing international protection (recast), COM(2009) 554 final, 21 October 2009, para. 3.1. "(…) aims to define the necessary conditions so that the asylum procedures applied in the Community are accessible, efficient, fair and contextualized (…)".

repeated application (...)"[33].

These are mechanisms of a procedural nature, which are identified by the Procedure Directive and which are consolidated and defined in a functional manner within the scope of asylum procedures.

In particular, par. 3 and 4 of the proposal under consideration have tried to highlight other additional aspects, related to the prevention of abuse of procedures, as procedural guarantees[34] which had the objective of improving for applicants the relevant criteria that are applicable to asylum applications and to a greater compliance with the related procedural obligations as measures that are foreseen in the quality of decision-making process including provisions that improve and identify instrumental and/or fraudulent applications.

The proposed recast of the Procedure Directive is translated into asylum procedures which aim to eliminate abusive applications (Costello, Hancox, 2015). The principle of abuse is defined as a provision. Normal procedures are not suitable for managing

33Proposal for a Directive of the European Parliament and of the Council on minimum standards for procedures applied in Member States for the purposes of granting and withdrawing international protection (recast), op. cit.

34Proposal put forward by the Commission, the proposed measures should: (a) reduce derogations from the procedural principles and guarantees enshrined in this Directive (for example, by eliminating the possibility of omitting the personal interview in accelerated procedures); b) provide new guarantees, such as the right to free legal assistance for applicants for international protection in first instance procedures; c) introduce special guarantees for vulnerable asylum seekers, including provisions on medical-legal assessments, the exemption of certain categories of applicants from accelerated or border procedures and from procedural regimes aimed at verifying the elements of the application in cases of persecution for gender or age reasons.

abusive applications and additional procedural mechanisms (Costello, Hancox, 2015).

In the proposal to recast the Qualification Directive (Ippolito, Velluti, 2011)[35] it is reported that:

"(...) adopted together with the recast of the Procedure Directive so as to guarantee a higher level of harmonization and better substantive and procedural protection standards, on the current legal basis, for the purposes of establishing a common asylum procedure and a uniform status (...) the proposed changes are aimed, among other things, at simplifying decision-making procedures and allowing more solid first-instance decisions, so as to prevent abuse (…). The objective is to reduce legal uncertainty and the margins of administrative error in order to process applications quickly, but also to strengthen the authorities' ability to deal with unfounded and exploitative applications (…). A connection is found between the need to prevent abusive and instrumental use of the system with the aim of allowing people who actually need international protection to access the rights recognized by the Directive more quickly and, at the same time, to improve the credibility of the entire process (…)"[36].

With the modification of the Dublin system[37], the proposal of the 2008 continued in the spirit of the previous regulations relating to the prohibition of abusive conduct (Guild, 2004;

35 Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 final, 21 October 2009, par. 1.1: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0466

36 Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), op. cit.

37 Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2008) 820 final, 3 December 2008: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0270%2801%29

Garlick, 2006) and with:

"(...) purposes pursued by its provisions and the principles underlying them, first of all that of the single jurisdiction, according to which an application for international protection that is proposed in the territory of the European Union by a citizen of a third country or by a stateless person must be examined by the competent authorities of only one Member State (…) on the need to combat the practice of multiple applications and, consequently, also the phenomenon of so-called secondary movements, with a view, as already highlighted, specifically aimed at preventing abuses in relation to asylum procedures (…)"[38].

The proposal to recast the Directive on reception measures[39] was oriented towards the limit of a profile linked to the fight against the abusive conduct of asylum seekers exposed in the proposal for the adoption of the Directive of 2003/9/EU, where the European Commission put the basis for the lives of applicants to reduce revocation and reception conditions, thus limiting the relevant circumstances where reception conditions are revoked and preventing asylum seekers from leaving the state of destitution towards circumstances that guarantee and respect

38Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), op. cit.

39Proposal for a Directive of the European Parliament and of the Council on minimum standards for the reception of asylum seekers in Member States (recast), COM(2008) 815 final, 3 December 2008: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52008PC0815.
Proposal for a Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), COM(2016) 270 final, 4 May 2016 This proposal was preceded by a previous one, dating back to September 2015 (COM(2015) 450 final, 9 September 2015), with which the Commission had proposed to partially modify the Dublin III regulation by introducing a "crisis relocation" mechanism, similar to that of Council decisions no. 1523 and n. 1601 of 2015, but of a permanent nature.

fundamental rights.

The proposal to reform the Dublin III regulation, the related legislative proposals for the reform of the directives on asylum procedures and qualifications[40] and the reception conditions[41] have noted that:

"(...) the Dublin mechanism is disturbed by abuses and the hunt for the most advantageous asylum (asylum shopping) by applicants and beneficiaries of international protection (...) given the shortcomings and weaknesses in the conception and in the implementation of the European asylum system, and especially the Dublin rules (…). The need to adopt clear provisions on the obligations of applicants and the consequences of failure to comply with these obligations is reiterated; the lack of such rules, in fact, means that the system often lends itself[s] to abuse by the applicants themselves[42] (...) the

40 Proposal for a regulation of the European Parliament and of the Council on rules on the qualification of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or persons entitled to subsidiary protection and on the content of recognized protection, amending Council Directive 2003/109/EC of 25 November 2003 on the status of third-country nationals who are long-term residents, COM(2016) 466 final, 13 July 2016.

41 Proposal for a Directive of the European Parliament and of the Council on rules for the reception of applicants for international protection (recast), COM(2016) 465 final, 13 July 2016: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0465

42 The present proposal under investigation: "(…) The proposal has the following specific aims: (…) to discourage abuse and prevent secondary movements of applicants within the EU, in particular by clearly establishing that they must apply in the Member State of first entry and remain in the Member State designated as competent; this also implies proportionate procedural and material consequences in the event of failure to comply with these obligations" (Report, paragraph 1). Furthermore, in the paragraph dedicated to "Stakeholder consultations" (paragraph 3.5), it is highlighted that, according to the Member States, "[t]he changes introduced with the 2013 reform (Dublin III) give applicants greater rights which, in case of abuse, risk ruining the entire system". See also Communication from the Commission to the European Parliament and the Council, Reforming the Common European Asylum System and strengthening legal routes to Europe, COM(2016) 197 final, 6 April 2016, p. 12: "(...9 to prevent secondary movements of beneficiaries of international protection, the provisions of the Qualification Directive on the provision of information, cooperation and reporting obligations will be strengthened (as regards asylum seekers). It will be clearly established that refugees can only enjoy rights and benefits in the Member State which has granted them protection and in which they are

measures proposed to sanction any violations of the system by asylum seekers are worth mentioning[43]; the application of an accelerated examination procedure which does not provide for the right to remain pending appeal (without prejudice to the principle of non-refoulement and the right to an effective remedy); the assignment to a specific area of the Member State concerned; subjection, if necessary, to detention measures; where possible, the granting of access only in kind to the benefit of the material reception conditions (...)"[44].

The profiles that no longer function well as well as the inefficiency of an asylum system are linked to forms of abuse and to operational mechanisms of asylum seekers.

The proposed regulation repealed Directive 2013/32/EU[45] through new visions for asylum seekers identified and bipolarized the provisions that took into consideration the abusive nature of the individual concerned[46]. Illegal asylum

obliged to remain. Furthermore, the Dublin Regulation will be amended to ensure that Member States take back beneficiaries of international protection who should remain in the Member State that granted them protection. The fact that a person has irregularly left the territory of that Member State could constitute a ground for initiating a review of his or her status (…)".

43 Communication from the Commission to the European Parliament and the Council, Reforming the Common European Asylum System and strengthening legal routes to Europe, COM(2016) 197 final, op. cit., p. 12 "(…) deepen and strengthen the current provisions of the acquis which relate the fact that an applicant does not submit an application in the shortest possible time, although he actually has the possibility to do so, with the assessment of the reliability of the application itself. This could lead to the irregular departure of a person from the responsible Member State being taken into account for the purposes of assessing the asylum application (…)".

44 Communication from the Commission to the European Parliament and the Council, Reforming the Common European Asylum System and strengthening legal routes to Europe, op. cit.

45 Proposal for a regulation of the European Parliament and of the Council establishing a common international protection procedure in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final, 13 July 2016: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016PC0467

46 "(…) ensures that, wherever they are in the EU, asylum seekers are treated fairly and appropriately. It provides the necessary tools for the rapid identification of people actually in need of international protection and the repatriation of those who do not need protection. It is generous towards the most vulnerable categories and rigorous towards potential abuses, always respecting fundamental rights (…)".

seekers have taken into consideration the introduction of restrictive and precise rules, making procedural tools mandatory, such as acts that punish abuses by applicants and second-line movements for unfounded requests.

The documents presented in September 2020 relating to the term used of fraud and/or avoidance did not give any result[47].

The proposal to amend the Eurodac regulation has set the objectives of avoiding abuses and specifying the innovations that imply the reform and the possibility for Member States to register voluntary repatriation and reintegration[48] thus allowing for better prevention against abuses.

In the Commission's advanced proposal[49] no reference to anti-abuse requirements is included, thus making the preliminary checks mechanism explicit, giving:

47 Commission staff working document accompanying the document Proposal for a regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive (EC)2003/109 and the proposed Regulation (EU)XXX/XXX [Asylum and Migration Fund], SWD(2020) 207 def., 23 September 2020: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020SC0207

48 Amended proposal for a Regulation of the European Parliament and of the Council establishing 'Eurodac' for the comparison of fingerprints for the effective application of Regulation (EU) XXX/XXX [Regulation on Asylum and Migration Management] and of Regulation (EU) XXX/XXX [Resettlement Regulation], for the identification of third-country nationals or stateless persons whose stay is illegal and for requests for comparison with Eurodac data submitted by law enforcement authorities of the Member States and by Europol to law enforcement purposes, and amending Regulations (EU) 2018/1240 and (EU) 2019/818, COM(2020) 614 final, 23 September 2020.

49 Proposal for a Regulation of the European Parliament and of the Council which introduces checks on third-country nationals at the external borders and amends Regulations (EC) no. 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM(2020) 612 final, 23 September 2020: https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A52020PC0612

"(...) accelerated assessment of asylum requests that are abusive or inadmissible, or that have been lodged by applicants from low recognition rate countries, in order to swiftly return those without a right to stay in the EU (…)".

The non-reference to abuse within the European Commission and the proposal for a regulation on the management of asylum and migration have the aim of replacing what we have had until now, i.e. the Dublin[50] regulation where the objective of preventing the related abuses enters the circle of greater commitment and protection on the part of the European submission[51].

By identifying the family members and what is pre-established by the legislation of 2016, an attempt is made to expand and protect:

"(...) brothers and sisters of the applicant (...) including kinship ties formed after departure from the country of origin but before arrival in the territory of the Member State (...) categories of subjects do not pose any risk of abuse, since (...) brothers and sisters constitute a limited but important category, for which it is relatively simple to prove and verify the kinship bond (...) taking into account families formed during transit allows for the establishment of a significant link between the person concerned and the competent Member State, which should reduce the risk of unauthorized movements or absconding of persons covered by the extension of the rules (…)"[52].

50 Proposal for a Regulation of the European Parliament and of the Council on asylum and migration management and amending Council Directive 2003/109/EC and the proposal for Regulation (EU) XXX/XXX [Asylum and Migration Fund], COM(2020) 610 final, 23 September 2020.

51 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast). Brussels, 4.5.2016 COM(2016) 270 final 2016/0133 (COD): https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016PC0270

52 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the

Obviously we have not noticed any proposal for amending protection for the notion of family in Art. 16 of the Dublin III, i.e. a criterion linking the determination, the existence of a dependency between the applicant and a child, a sibling, a parent according to reasons of pregnancy, maternity, serious illness, disability and advanced age, including marriages fictitious, causes of fear and the number of subjects who took the relevant norm into consideration (Maiani, 2022).

From what we have understood so far is that the use of abuse by the institutions and the proposals based on the CEAS legislation was now a quite frequent phenomenon of commitment. The Dublin Mechanism and the Qualification Directives have put the principle of abuse at the forefront in numerous respects in the field of asylum, thus proposing to prevent and discourage the application for recognition relating to international protection. Preventing abusive conduct, especially by people seeking asylum and pursuing the path of reform processes, ensures correct operation of cases in the event that legal instruments of the CEAS establish abusive conduct under the rhetoric of a system that still lacks in the sector of functioning of the system of abuse of rights. The documents against abuse have arisen from the creation of a system of mechanisms that take into

Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), op. cit.

consideration a regulatory panorama that is part of the CEAS.

The jurisprudence that interprets the CEAS

If we accept that there is a general principle that prohibits abusive practices, the application space of procedural rules is outlined, through a limiting and even restrictive interpretation that presupposes an anti-avoidance ratio which represents a useful tool that recognizes the concept of abuse of right to respect the principles and the rights at stake. The decisions of the ECtHR regarding the recognition of the right to asylum have helped to establish certain standards that guarantee fundamental rights (Moraru, 2021; Bailleux, 2023).

In contradiction with the Dublin system the principle of uniqueness examines asylum applications and distribution criteria which are identified in regulation 604/2013[53]. Certain behaviors are opposed to Art. 33, par. 2, letter. a) of the Directive 2013/32/EU. Especially,

"(…) a) the preparation of the procedures for taking charge and back charge, which allow the activation of the transfer system; b) the inadmissibility of the asylum application presented following prior recognition by another Member State of a form of international protection (...)" (Bailleux, 2023).

53Regulation (EU) No 604/2013 of the European Parliament and of the Council of 26 June 2013 establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), OJ L 180, 29.6.2013, p. 31-59: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32013R0604

Operational problems are relevant in individual domestic asylum systems which represent a substantial risk for people seeking asylum, incompatible with their fundamental rights and with Art. 4 of the CFREU (Kellerbauer, Klamert, Tomkin, 2019).

It is obvious that the jurisprudence of the CJEU and the ECtHR identify abusive phenomena, secondary movements and forum shopping that justify transfers that allow the inadmissibility of an application for protection, Art. 33, par. 2, letter. a).

Mutual trust puts the transfer logic already into the ECtHR (Villiger, 2023)[54] and the CJEU (Lieven, 2012)[55.] In fact, it is noted the impossibility for Member States to proceed with the relevant Dublin transfers without carrying out a de facto control. The state accepts that the asylum seeker proceeds to examine the relevant application due to systemic deficiencies and renders the transfer itself illegitimate[56].

In the Ibrahim case (Boháček, 2022)[57], as well as in the Jawo judgment (Anagnostaras, 2020)[58] the CJEU stated:

54ECtHR, M.S.S. and others v. Belgium and Greece of 21 January 2011.

55CJEU, C-411/10, N. S. and others of 21 December 2011, ECLI:EU:C:2011:865, I-13905.

56CJEU, C.K. and others, op. cit., ECtHR, Tarakhel v. Switzerland of 4 November 2014.

57CJEU, joined cases: C-297/17, C-318/17, C-319/17 and C-438/17, Ibrahim and others of 19 March 2019, ECLI:EU:C:2019:219, published in the electronic reports of the cases, par. 100.

58CJEU, C-163/17, Jawo of 1st March 2019, ECLI:EU:C:2019:218, published in the electronic reports of the cases.

"(…) we must evaluate the legitimacy of the Dublin transfers in the broader context of Article 4 of the Charter (...) the transfer ordered pursuant to Article 29 of the Dublin III Regulation must be permitted only on condition that the judge hearing the appeal against the transfer decision does not find, on the basis of objective, reliable, precise and appropriately updated elements and taking into account of the level of protection of fundamental rights guaranteed by Union law, the existence of such a risk for the applicant due to the fact that, in the event of a transfer, the latter would find himself, regardless of his will and personal choices, in a situation of extreme material deprivation (...)"[59].

In the Ghezelbash case[60] the CJEU noted that:

"(...) Article 27 of the Dublin Regulation, read in the light of recital 1) of the same regulation, must be interpreted as meaning that an asylum seeker can deduce, in the context of such an appeal, the incorrect application of a criterion of competence referred to in Chapter III of that regulation (…). The Union legislator did not intend to sacrifice judicial protection to the need for speed in the processing of asylum applications of asylum seekers[61] (...) can only apply a fortiori with reference to regulation no. 604/2013, as with this regulation the Union legislator has significantly developed the procedural guarantees offered to asylum seekers within the Dublin system (...)"[62].

In the H. and R. ruling[63]:

"(...) the possibility for an asylum seeker who has submitted multiple asylum applications to assert, as a ground for appeal against the transfer, the

59CJEU, joined cases: C-297/17, C-318/17, C-319/17 and C-438/17, Ibrahim and others of 19 March 2019, op. cit., par. 101 and 88: "(…) circumstance that beneficiaries of (...) subsidiary protection (in a Member State) do not receive, in that Member State, any subsistence benefit, or are recipients of such a benefit to a much lesser extent than in other Member States, without being treated differently from nationals of that Member State, may lead to a declaration that such an applicant would be exposed there to a (…) risk (of suffering inhuman or degrading treatment, within the meaning of Article 4 of the Charter) only if this circumstance entails the consequence that the latter would find himself, in consideration of his particular vulnerability, independently of his will and personal choices, in a situation of extreme material deprivation (…)".

60CJEU, C-63/15, Ghezelbash of 7 June 2016, ECLI:EU:C:2016:409, published in the electronic reports of the cases.

61CJEU, C-19/08, Petrosian and others of 29 January 2009, ECLI:EU:C:2009:49, I-00495, par. 48.

62CJEU, C-63/15, Ghezelbash of 7 June 2016, op. cit.

63CJEU, C-582/17 and C-583/17, H. and R. of 2 April 2019, ECLI:EU:C:2019:280, published in the electronic reports of the cases.

applicability of the criterion of competence to protect the family unit referred to in Article 9 of the Dublin Regulation, where it has forwarded to the competent authority of the Member State requesting the transfer elements which clearly demonstrate that the latter should be considered the Member State responsible for examining the application in application of said competence criterion (…)".

In the I, S. v. Staatssecretaris van Justitie en Veiligheid case of 2022[64] it was stated that:

"(...) based on a literal interpretation, Article 27, par. 1 of the Dublin Regulation appears to recognize a right of appeal to the applicant for international protection only for the purpose of contesting a transfer decision, this provision does not exclude that a right of appeal is also granted to the unaccompanied minor applicant in order to contest a refusal decision of taking charge based on art. 8, par, 2[65]. The judicial protection of an unaccompanied minor cannot vary depending on whether he is the recipient of a transfer decision, adopted by the requesting Member State, or of a decision by which the requested Member State rejects the request for transfer. Taking charge of the same (...) the minor may see his right to family reunification jeopardized (...) if it is true that, in accordance with Article 8, paragraph 2, of the regulation in question, the designation of the Member State in which he is located the relative of the unaccompanied minor applicant as the competent Member State is subject to the condition that it is in the best interests of the minor, by that provision, by recitals 14 and 16 and by Article 6(3)(a) and (4), of the same regulation, it follows that respect for family life and, in particular, the possibility for an unaccompanied minor to be reunited with a relative who can look after him during the processing of his application is, in principle, in the best interests of the minor (...)"[66].

64CJEU, C-19/21, I, S. v. Staatssecretaris van Justitie en Veiligheid of 1st August 2022, ECLI:EU:C:2022:605, not yet published.

65CJEU, C-560/20, Landeshauptmann von Wien (Regroupement familial avec un mineur réfugié) of 31 January 2024, ECLI:EU:C:2024:96, not yet published.

66CJEU, C-19/21, I, S. v. Staatssecretaris van Justitie en Veiligheid of 1st August 2022, op. cit., par. 47. In the same argument see also: C-1/23, Afrin of 18 April 2023, ECLI:EU:C:2023:296, not yet published. C-294/22, OFPRA (Statut de réfugié d'un apatride d'origine palestinienne) of 05 October 2023, ECLI:EU:C:2023.733, not yet published. C-61/22, Landeshauptstadt Wiesbaden of 21 March 2024, ECLI:EU:C:2024.251, not yet published.

In the Bundesrepublik Deutschland case (Enfant de réfugiés, nor hors de l'État d'accueil) of 2022[67] it was stated that:

"(...) Article 33, paragraph 2, letter a) cannot be applied, of the Procedures Directive in response to a minor's application for international protection, if it is not the minor himself, but his parents, who benefit from international protection in another Member State (...) the declaration of inadmissibility of such an application on the basis the analogical application of the cited provision would not take into account only the exhaustive nature of the list referred to in Article 33, paragraph 2, of the Procedures Directive, but also the fact that the situation of such a minor is not comparable to that of an applicant for international protection who already benefits from similar protection granted by another Member State, which excludes any analogy (…)".

The Dublin procedural system

The Regulation Dublin III constitutes the basis for the functioning of a common European asylum system and the related mechanisms that govern and deal with the phenomena that qualify abusive conduct as second line point, as safe zone reached at destinations where applications for international protection grant a form of protection of an international nature that sufficiently authorizes the relevant travel documentation (Zimmermann, 2009)[68].

67CJEU, C-720/20, Bundesrepublik Deutschland (Enfant de réfugiés, né hors de l'État d'accueil) of 1st August 2022, ECLI:EU:C:2022:603, not yet published.

68Zimmermann affirms that: "(…) movements appear to contradict the idea, as based upon the 1951 Convention refugee definition, that safety is at the root of refugee migration, since with that already attained in previous areas questions arise about the causes of movements to new ones. As a result of the distinction between primary and secondary movements, the latter are more likely to be seen as voluntary and motivated by economic or quality of life concerns than by safety (…)".

Thus, movements that have a secondary character are distinguished as forms of international protection, i.e. those who request asylum by entering the territory of a Member State and who present a request for protection.

The reform of the Dublin III has allowed a relative risk which perhaps destabilizes the general asylum system[69] as stated by the work carried out by the European Parliamentary Research Service[70], where:

"(...) secondary movements constitute an element capable of put under pressure the national systems for recognizing the right to asylum, their reception capacities, the stability of their economic systems and lead to concerns related to internal security in the host country (…). Such movements may imply a risk for asylum seekers who find themselves in an irregular situation of being exposed to violence and various forms of exploitation (...) asylum seekers are denied the possibility of remaining in the country of destination and (...) of returning to a country from which they have previously passed, they run the danger of being left in a sort of "limbo", that is, of being moved from one country to another without their asylum request

69 UNHCR affirms that: "(…) they have been formally identified as such or not (asylum-seekers), who move in an irregular manner from countries in which they have already found protection, in order to seek asylum or permanent resettlement elsewhere, is a matter of growing concern. This concern results from the destabilizing effect which irregular movements of that kind have on structured international efforts to provide appropriate solutions for refugees. (…) Of similar concern is the growing phenomenon of refugees and asylum-seekers who will fully destroy or dispose of their documentation in order to mislead the authorities of the country of arrival (…)". See also: UN General Assembly, Addendum to the Report of the United Nations High Commissioner for Refugees: Report of the Executive Committee on the Programme of the UNHCR on the Work of its Fortieth Session, 30 October 1989 (A/44/12/Add.1): https://www.unhcr.org/publications/addendum-report-united-nations-high-commissioner-refugees-17

70 A. Radjenovic, Secondary movements of asylum-seekers in the EU asylum system, European Parliamentary Research Service (EPRS), PE 608.728, October 2017: https://www.europarl.europa.eu/RegData/etudes/BRIE/2017/608728/EPRS_BRI(2017)608728_EN.pdf

being assessed (...)"[71].

Dublin III gave in our hands criteria that have to do with: examinations for the asylum application, control, evaluation, exceptions of a disciplined, precise, concrete system of general responsibility[72], i.e. with specific criteria which qualify the applicant's unaccompanied minor, the family member who benefits from international protection and who requires international protection, visas and residence permits and irregular stay within a given Member State of the EU[73] thus attributing some specific requirements for asylum seekers which reflects the responsibility for the examination and questions as well as the regular entry of a foreign citizen.

In particular, Art. 7 of the Dublin regulation established the general order of the competence criteria that sanction the freezing rule (Hruschka, Maiani, 2022). This rule provided the basis for a situation existing at a time when the applicant presented the relevant application for international protection to

71 A. Radjenovic, Secondary movements of asylum- seekers in the EU asylum system, European Parliamentary Research Service (EPRS), op. cit.

72 Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), op. cit., par. 2.1.

73 Article 13: "(…) on the basis of the evidence and circumstantial circumstances referred to in the two lists mentioned in Article 22(3) of this Regulation, including the data referred to in Regulation (EU) No. 603/2013, that the applicant has illegally crossed the border of a Member State, by land, sea or air, coming from a third country, the Member State in question is responsible for examining the application for international protection. This responsibility ceases 12 months after the date of illegal border crossing (…)".

a Member State. It is a rule that conceives and favors the applicants. It also finds the criteria that must be applied in operation of articles 9 and 10 for the family member who respects and asserts the right to family life. The recognition of a form of international protection is made a few days from the presentation of the relevant application by the interested party. Thus the European Commission introduced the exception of the freezing rule. In fact, this rule protects family unity and it has to do with the asylum seeker who has submitted an application for international protection[74].

This modification was amended by the European Parliament and attempted to justify from a political point of view the relevant exemption for precise liability which in reality was in favor of forms of abuse[75].

74Proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person, COM (2008) 820 final, 3 December 2008, p. 30. Art. 7, par. 3 affirms that: "(…) to guarantee respect for the principle of family unity and the prevailing interest of the minor, the determination of the competent Member State in application of the criteria defined in Articles 8 to 1 takes place on the basis of the situation existing at the time in which the asylum seeker submitted the most recent application for international protection. This paragraph applies provided that the asylum seeker's previous applications have not yet been the subject of a first substantive decision (...)".

75European Parliament, Report on the proposal for a regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), A6-0284/2009, Amendment 20, 29 April 2009.

The Council itself has proposed the application of exceptions to the relevant criteria according to art. 9[76]. Secondary movements thus speed up the asylum request which consists of two phases with specific competence.

The Dublin II (i.e. Regulation 604/2013) has passed some precise deadlines for the submission of applications[77]. These are the requests for international protection. According to art. 23, par. 2 requests must be submitted within two months of receiving the relevant response from Eurodac and according to Art. 9, par. 5 of the EU Regulation n. 603/2013. The request should be based on various data and evidence obtained from the Eurodac system within a maximum period of up to three months after the relevant submission of the application requesting international protection[78]. The obligations to respond and the

76Council of the EU, Regulation of the European Parliament and of the Council establishing the criteria and mechanisms for determining the Member State responsible for examining an application for international protection lodged in one of the Member States by a third-country national or a stateless person (recast), doc. No. 12328/09, 29 July 2009.

77CJEU, C-213/17, X of 5 July 2018, ECLI:EU:C:2018:538, pubslihed in the electronic reports of the cases, par. 40: "(…) Article 23(3) of the Dublin III Regulation must be interpreted as meaning that the Member State in which a new application for international protection has been lodged is responsible for examining it, if a take back request was not formulated by that Member State within the time limits referred to in Article 23(2) of that Regulation, even though, on the one hand, another Member State was responsible for examining previously submitted applications for international protection and, on the other hand, at the expiry of the aforementioned deadlines, the appeal brought against the rejection of one of those applications was pending before a judge of the latter Member State (…)".

78Proposal for a Regulation of the European Parliament and of the Council which introduces checks on third-country nationals at the external borders and amends Regulations (EC) no. 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU)

implementation of the regulation for the application for international protection according to Art. 34, par. 4 requires the Member State to plead for the communication of the data requested[79] within five weeks, thus justifying any delays.

The application for humanitarian reasons can be presented at any time according to art. 17. In fact, it can be presented at the moment that the Member State expresses its willingness to request international protection and to proceed with the determination of the relevant state which is competent and at any time before it adopts the decision requesting to take charge of the applicant who adopts a decision to proceed with the reunification of people who are related by kinship, for humanitarian reasons.

The requested state can ensure that it checks, verifies the humanitarian reasons and responds to the requesting Member State within two months to receive the request and give reasons

2019/817, COM(2020) 612 final, op. cit.

79Proposal for a Regulation of the European Parliament and of the Council which introduces checks on third-country nationals at the external borders and amends Regulations (EC) no. 767/2008, (EU) 2017/2226, (EU) 2018/1240 and (EU) 2019/817, COM(2020) 612 final, op. cit., article 34, par. 2: "(...) the information that may be requested may only concern: only: a) data relating to the identification of the applicant and, possibly, of his family members, relatives or persons linked by other kinship ties (surname, name and, possibly, previous surname; nicknames or pseudonyms; current and previous citizenship, date and place of birth); b) identity and travel documents (reference, period of validity, dates of issue, issuing authority, place of issue, etc.); (c) other elements necessary to establish the identity of the applicant, including fingerprints processed in accordance with Regulation (EU) No. 603/2013; d) places of stay and travel itineraries; d) residence permits or visas issued by a Member State; f) the place where the application was submitted; g) the date of submission of any previous application for international protection, the date of submission of the current application, the state of progress of the procedure and any decision adopted (…)".

for its refusal.

The examination of the application could also be made for applications submitted to third countries thus allowing the identification of new asylum applications that comply with and provide tools for tracking secondary movements.

Returning to secondary movements, the Irish High Court has interpreted Article 15 of the Directive thus qualifying when the applicant has made a secondary movement and appealing the transfer decision that has been addressed by the CJEU.

The Advocate General De La Tour through its conclusions, which are presented on 3 September 2020[80], did not accept the application for international protection. In such a case the applicant to exercise the relevant appeal was comparable with a delay resulted in the judicial proceedings and deprived the rule on reception according to art. 15.

In particular, the Advocate General admitted that[81]:

"(...) a Member State when is faced with a high number of incidents of abuse of rights or fraud by citizens of third states cannot justify the adoption of a measure based on considerations of general prevention, and which leaves aside any specific evaluation of the behavior of the person concerned (…). The failure to recognize a right explicitly attributed by Union law, due of the mere belonging of the interested party to a specific group of people (...) underlined the need for an assessment of the existence of the abuse by the national judge, required to make use of the test developed in the Emsland-

80CJEU, see the conclusions of the Advocate General Jean Richard De La Tour presented in joined cases: C-322/19 and C-385/19, K.S., M.H.K. and R.A.T., D.S. of 3 September 2020, ECLI:EU:C:2020:642, not yet published.

81CJEU, C-202/13, McCarthy and others of 18 December 2014, ECLI:EU:C:2014:2450, published in the electronic ρeports of the cases, parr. 55 and 56.

Stärke judgment (...)[82]. It cannot be assumed, without an examination of the circumstances of the case by the national judge, that the bringing of a judicial appeal against a transfer decision constitutes an abuse of rights (...)[83]. A subjective element consisting in the desire to obtain an advantage deriving from Union legislation by creating artificial nature of the conditions necessary for obtaining it (...) has excluded the admissibility of measures which pursue, in a generalized manner, an objective of general prevention of widespread cases of abuse of rights or fraud (...)"[84].

This is not a very reasonable position given that it excluded the concept of abuse of rights in the national legislation. It was introduced a general presumption of abuse in the face of an exercise of an appeal against a transfer admitted the possibility of excluding a right of abuse ascertained by the test developed by the CJEU itself. However, there are numerous cases where the application of the relevant test to the asylum sector are unfounded.

Multiple asylum applications

The applications can also be multiple and towards third countries. New asylum applications are submitted describing a phenomenon of secondary movement. Multiple applications are

82CJEU, see the conclusions of the Advocate General Jean Richard De La Tour presented in joined cases: C-322/19 and C-385/19, K.S., M.H.K. and R.A.T., D.S. of 3 September 2020, op. cit., parr. 123-124.

83CJEU, see the conclusions of the Advocate General Jean Richard De La Tour presented in joined cases: C-322/19 and C-385/19, K.S., M.H.K. and R.A.T., D.S. of 3 September 2020, op. cit., par. 90.

84According to the CJEU, par. 93: "(...) in the foregoing considerations, it is necessary to answer the fifth question raised in Case C-322/19 that Article 15(1) of Directive 2013/33 must be interpreted as meaning that a Member State cannot attribute to the applicant for international protection, the delay in the examination of his application resulting from the submission, by the latter, of a judicial appeal, having suspensive effect, against the transfer decision adopted against him, in application of the Dublin III Regulation (...)".

expressed as a form of abuse towards the fight against one of the pursued objectives which identify with a precise method a mechanism for sharing responsibility between Member States based on the principle of allocating responsibility for an application for international protection which proposes to a citizen of a third country and/or a stateless person all the subsequent phases of a legal situation of a specific person. The Member State according to Art. 18 of the regulation of Dublin will have to examine and decide definitively for the international protection of an applicant, deal with the relative reception, reject the application and appeal according to Art. 46 of Directive 2013/32/EU, providing for removal to the country from which the asylum seeker came.

There is no free movement of beneficiaries for international protection[85]. The principle of uniqueness and its relative competence is noted in the mechanisms of management situation that have to do with asylum seekers. According to Articles 23, 24 and 25 a Member State receives an application for international protection from a person who has presented the asylum application in another Member State[86].

85 See Article 18, par. 1, lett. a), Regulation 604/2013.

86 "(…) the take back request may be made by a Member State where a person referred to in Article 18(1)(b) (i.e. the applicant whose application is being examined and who has applied in another Member State or is in the territory of another Member State without a residence permit), (c) (i.e. a third-country national or a stateless person who has withdrawn his application during the examination and who has lodged an

The Irish judge[87], in a preliminary ruling, took a position for a citizen of a third country who granted international protection and was transferred to a second Member State. The judge asked the CJEU to take into consideration and analyze the asylum application which constituted an abuse of rights. For this reason, the CJEU adopted relevant measures. The national judge, through the rule of the general principle which prohibits abuse and precludes access to the procedure for examining the asylum application, has based the qualifying conduct on multiple applications. The decision of inadmissibility is independent of the law which establishes an ad hoc regulation of multiple applications, admitting that the operation of a general principle deals with a conduct which can be classified as abusive in relation to express mechanisms which oppose types of conduct.

The M.S., M.W. and G.S. case has included the general principle of law that takes place in the face of a conduct that can be classified as abusive and declare as inadmissible applications from different states. In this regard, the Advocate General stated

application in another Member State or who is in the territory of another Member State without a residence permit), or (d) (i.e. a third-country national or a stateless person whose application has been rejected and who has lodged an application in another Member State or is in the territory of another Member State without a residence permit), has lodged a new application for international protection which considers that another Member State is responsible pursuant to Article 20(5) , and Article 18, paragraph 1, letters b), c) or d) (…)".

87 See preliminary ruling of 2 July 2019, brought by the Irish High Court and filed on 16 August 2019 in case C-616/19, Minister for Justice and Equality (Demande de protection internationale en Irlande), ECLI:EU:C:2019:648, not yet published.

that[88]:

"(...) international protection presented by a third-country after having obtained subsidiary protection in a first Member State does not constitute in itself (...) an abuse of rights (...) citizens of third countries can legitimately seek protection in the Union, if they are driven by circumstances (...) the subsidiary protection status in another Member State, sanctioning the possibility of declaring the relevant application inadmissible (...) cannot be qualified in general and abstract terms as an abuse of rights, being able, if anything, to be classified as such in the light of a case-by-case examination (...)"[89].

The Advocate General has accepted the possibility of a practice which presents an application to a different Member State as an act of abuse, thus underlining that the need for proof concerns those who attempt to obtain an advantage deriving from a regulation of the Union creating the relevant conditions necessary for obtaining it according to the relevant jurisprudence on the subject of abuse from the CJEU.

Some conducts through the lenses of the CJEU

The Dublin system rules have also passed through the jurisprudence of the CJEU. In the N.S. case. and others[90] the CJEU stated that:

"(…) accelerate the processing of applications in the interests of both asylum seekers and participating states (…) rationalize the processing of asylum applications and avoid saturation of the system with the obligation for national authorities to deal with multiple applications introduced by the same

88CJEU, see conclusions of the Advocate General Henrik Saugmandsgaard Øe presented in case: C-616/19, M.S., M.W., G.S., op. cit.

89CJEU, see conclusions of the Advocate General Henrik Saugmandsgaard Øe presented in case: C-616/19, M.S., M.W., G.S., op. cit.

90CJEU, C-411/10 and C-493/10, N.S. and others of 21 December 2011, op. cit., par. 79.

applicant, to increase legal certainty regarding the determination of the responsible state for processing the asylum application and, in doing so, to avoid forum shopping (...) the movement through different Member States and the consequent presentation of multiple or successive asylum applications constitute conduct that contradicts the ratio of legal certainty which underlies the principle of the uniqueness and immutability of the competence to deal with asylum applications; although not specifically prohibited by a specific law, these behaviors are classified as "abusive", precisely because they elude this logic, the result of a precise political choice by the Union legislator (...) the reason underlying these movements is not even relevant; the simple the fact that the determining criteria of jurisdiction established by the Dublin regulation are not respected implies the implementation of anti-avoidance mechanisms (...)"[91].

The justification of a normative level of dual existence between asylum systems in different Member States is considered by the CJEU and found its peak during the immigration crisis between 2015-2016 at moments when the EU needed greater protection, solidarity, trust, defense of one's interests to find a solution to a model of mutual cooperation and sharing for responsibility in the field of asylum, family reunification and social rights[92].

The recognition of statuses provided for by the Qualifications Directive is also based on the refugee status in a subsidiary manner and for a specific country of origin. Thus the phenomena of control, evaluation, examination for asylum

91 CJEU, C-411/10 and C-493/10, N.S. and others of 21 December 2011, op. cit., par. 80.

92 Communication from the Commission to the European Parliament and the Council towards a reform of the common European asylum system and enhancing legal avenues to Europe, Brussels, 6.4.2016 COM(2016) 197 final: https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52016DC0197, p. 5: "(…) The Common European Asylum System is also characterized by differences in the treatment of asylum seekers from one Member State to another, in particular as regards the length of asylum procedures or reception conditions, which in turn encourages secondary movements (…)".

seekers are through resilience techniques[93] essential elements to aspire to the relative protection of third country citizens as factors that also justify the movements of asylum seekers and the limits of the relative recognition of the right of asylum as standard where the risk of being rejected leads to the reunification of families and to migratory channels that present opportunities for a better future (Brekke, Brochmann, 2015; Schapnedonk, 2018)[94].

The secondary movements read the questions that have to do with abusive conducts as behaviors of abusive forms of rule appropriation where asylum seekers move within the territory of the Union, thus benefiting from a specific legal system.

The legal basis for accelerated border procedures

Art. 31, par. 8 of the Procedures Directive implied the application of an accelerated procedure which took place at borders and in transit zones[95] excluding the guarantees of

93To be evaluated, the expression "most favorable" also means determining that the legal system must remember the legal profiles that are connected with recognition procedures that concern international protection and as well as aspects related to social policies relating to individual states. members who allow suitable work and social integration of foreigners as well as access to public assistance activities.

94United Nation High Commissioner for Refugees (UNHCR), Onward Movement Of Asylum-Seekers And Refugees: Discussion paper prepared for the Expert Roundtable on Onward Movement Graduate Institute of International and Development Studies, Geneva, 1-2 October 2015.

95See Art. 31, par. 7 of the Procedures Directive which states: "(...) proposed by an asylum seeker who is vulnerable within the meaning of Article 22 of Directive 2013/33/EU, or [who] requires particular procedural guarantees, especially if it is unaccompanied minor (…)".

Chapter II which were part of the same Directive showing that the hypotheses have explicitly highlighted the proposals of reform of the European Commission for the presumption of illegality of the conduct of the person involved[96].

The nature of this procedure is included in art. 31, par. 8[97]. Art. 43 also accepts the procedure which is part of art. 31, par. 8. That is, procedures that last for four weeks and the applicant in the territory that is until the examination of his application and the related provisions of the Directive[98] allow Member States to require applicants for international protection to remain for a maximum duration of four weeks at border of the transit zones before the definitive entry into one's own country according to Art. 33 of the Directive 2013/32/EU thus declaring Art. 31, par. 8 of the Directive unfounded.

Art. 43, par. 3 gave Member States the opportunity for a massive influx of applicants for international protection and to

96 See the recital n. 20 of the Procedures Directive: "(…) an application may be unfounded or there are serious national security or public order concerns, Member States should be able to accelerate the examination procedure, in particular by introducing shorter deadlines, but reasonable, at certain procedural stages, without prejudice to the carrying out of an adequate and complete examination and effective access of the applicant to the fundamental principles and guarantees provided for in this Directive (…)".

97 Executive Committee of the High Commissioner's Programme, The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum, op. cit.

98 CJEU, joined cases C-924/19 PPU and C-925/19 PPU, FMS and others v. Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság of 14 May 2020, ECLI:EU:C:2020:367, not yet published, par. 235

apply the related acceleration procedures at the borders within the deadline of four weeks before the deadline expired (Vedsted-Hanses, 2023)[99], i.e. at the moment that the applicants for international protection are accepted until the deadline expires, in the vicinity of the borders and in the relevant transit zone[100].

Applying the relevant procedures means legitimizing the detention measures according to Art. 8, par. 3, letter. c) of the Reception Directive which states that: An applicant can only be detained to decide, in the context of a proceeding, on the applicant's right to enter the territory.

Also Article 10, par. 5, and Article 11, par. 6 of Directive 2013/33/EU refer to the methods of detention that an applicant for international protection who is at the border and/or in a transit zone can apply the relevant precise procedures of Art. 43, Directive 2013/32/EU.

According to recital 38 of Directive 2013/32/EU the border procedures allow the relevant Member States to decide on

99Vedsted-Hanses affirms that: "(...) provision may seem to allow for extending 'border procedures' both geographically and temporally where and for as long as these third-country nationals or stateless persons are accommodated normally at locations in proximity to the border or transit zone (…)".

100CJEU, joined cases C-924/19 PPU and C-925/19 PPU, FMS and others v. Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, op. cit., parr. 245-246: "(…) Article 43(3) of Directive 2013/32 necessarily excluded them from remaining in detention. (…) It follows that Article 43(3) of Directive 2013/32 does not legitimize a Member State to detain applicants for international protection at its borders or in one of its transit zones beyond the four-week period (…), even if a massive influx of applicants for international protection makes it impossible to apply the procedures provided for in Article 43(1) of that Directive within such a period (…)".

applications for international protection that are presented at the border and in the transit zones to a Member State thus taking the admission decision for applicants in their territory[101].

The detention and operation of the procedures for people requesting asylum also makes us think about art. 41 which speaks of an exemption for (repeat) applicants to remain in the territory of a Member State through the examination of the asylum application. Art. 46, par. 6 derogates such provision and implies the autonomous authorization to those who ask the applicants to remain in their territory upon the relevant deadline who exercises their right to an effective appeal which is exercised within the foreseen time frame and the outcome of the appeal.

What type of abusive conduct do we have?

According to art. 31, par. 8 some particular cases are taken into consideration. Such as for example the presentation of the application to explain the facts about the applicant which is not relevant in the control and attribution of the qualification of beneficiary of the relevant international protection according to

101 CJEU, joined cases C-924/19 PPU and C-925/19 PPU, FMS and others v. Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, op. cit., par. 236: "(…) Article 43 of Directive 2013/32 authorizes Member States to 'detain', pursuant to Article 2(h) of Directive 2013/33, applicants for international protection who present themselves at their borders, under the conditions set out in that article 43 and in order to guarantee the effectiveness of the procedures provided for therein (…)".

Directive 2011/95/EU[102].

Art. 4 of the Qualification Directive talks about a cooperation for the competent authorities, when the applicant who has applied for asylum[103] does not allow the evaluation of useful elements for the asylum application. It also implies the possibility for the Member State to carry out the relevant procedures.

According to art. 31, par. 8 the deprivation of procedural guarantees are achieved through conduct that is classified as abusive when it does not provide the relevant minimum requirements and recognizes the forms of protection as legitimate. The applicant who comes from a safe country of origin as well as Art. 36 of Directive 2013/32/EU that qualifies the state as safe and leaves the state of origin at the state of first asylum and/or transit of the protection applicant, formulate a regulatory instrument that is based on an emergency discourse of illegal migratory practices (Morgades-Gil, 2020).

According to the relevant letters c), d), e) and g) of the rule we are examining, the behavior of the asylum seeker appears to be

102Directive 2011/95/EU of the European Parliament and of the Council of 13 December 2011 on standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, for a uniform status for refugees or for persons eligible for subsidiary protection, and for the content of the protection granted (recast), OJ L 337, 20.12.2011, p. 9–26.

103Par. 1 affrims that: "(...) that Member States may establish that the asylum seeker is required to produce all the elements necessary to justify the application itself, i.e. to make declarations regarding the reasons underlying his application for asylum, as well as to provide the documentation in his possession useful for investigating the request (...)".

fraudulent. Moreover, according to

"(...) letter c) the applicant has misled the authorities by submitting false information or documents or by omitting relevant information or documents relating to his identity and/or citizenship which could have influenced the decision negatively; letter d) of the hypothesis in which it is probable that, in bad faith, the applicant has destroyed or otherwise made disappear an identity or travel document which would have allowed his or her identity or citizenship to be ascertained; letter e) the applicant has made clearly inconsistent and contradictory, false or obviously improbable statements which contradict sufficiently verified information on the country of origin, thus making his claim to be entitled to the qualification of beneficiary of international protection under the Directive clearly unconvincing 2011/95/EU; letter g) the applicant presents the application for the sole purpose of delaying or preventing the execution of a previous or imminent decision which would lead to his/her removal (…)" (Morgades-Gil, 2020).

These are hypotheses of fraud that appropriately respect the operation which cannot benefit from the recognized right of the legislation of the EU and which the Member States are thus legitimized and exclude the relative benefit from the procedural guarantees in the relevant conduct.

The violation of the law which is thus integrated into a hypothesis of fraud is seen in particular in the letter h) which relates to the situation where the applicant illegally enters the territory of the Member State who has illegally extended his stay without a valid reason and the authorities have not submitted the application for international protection. This provision is in line with Art. 13 of the Directive 2013/32/EU. It also evaluates the elements included in Art. 4, par. 2 of Directive 2011/95/EU:

"(...) the applicant's declarations and all the documentation in the applicant's possession regarding his age, background, including, where necessary, his relatives, identity, citizenship(s), country(ies) and place/places where you have previously stayed, previous asylum applications, travel itineraries, travel documents, as well as the reasons for your application for international

protection (…)"[104].

Such provision identifies the purposes of the final processing of the application[105]. It is referred to the competent authorities who appear before them. According to Art. 4 of the Directive 2011/95/EU, the applicant's duty is to produce the elements that are necessary to give the relevant justification for the application and make declarations on the basis of an asylum application providing his/her possession for the investigation of the application and introducing the relevant time limits (Dörig, 2023)[106].

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104 CJEU, joined cases C-924/19 PPU and C-925/19 PPU, FMS and others v. Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság, op. cit.

105 Among the related obligations are: "(...) deliver the documents in their possession relevant for the purposes of examining the application; inform the competent authorities of their place of residence or domicile of the moment and of any change thereof, as soon as possible; submit to any searches (carried out by a person of the same sex, in full compliance with the principles of human dignity and physical and psychological integrity); be subjected to any photographs or recordings of oral statements (...)".

106 This expression is used when the requester was informed in a language he understands as well as the obligation to justify the request according to art. 12, par. 1, letter. a) of the Procedure Directive. And in a subordinate way where the judging authority waits to be informed and then presents the relevant request according to art. 4, par. 1 of the Directive 2011/95/EU. CJEU, joined cases C-148/13, C-149/13 and C-150/13, A, B and C, of 2 December 2014, ECLI:EU:C:2014:2406, published in the electronic reports of the cases, parr. 70-71: "(...) the obligation imposed on asylum seekers to present the elements necessary for the investigation of the case "as soon as possible" must be balanced by the duty imposed on the determining authority to conduct the interview taking into account the personal or general situation in which the question itself is inserted, as well as the vulnerabilities of the applicant. In the present case, deeming the applicant not credible simply because he had not revealed his sexual orientation during the first examination was considered a violation of the duty of cooperation of the competent authority for examining asylum applications, imposed by the European provisions (…) it is not possible to conclude that the latter lacks credibility simply because, due to his reticence to reveal intimate aspects of his life, he did not immediately declare his homosexuality (…)".

Letter i) has to do with the fulfillment of the fingerprint obligation. EU Regulation no. 603/2013 of the European Parliament and the Council of 26 June 2013, compared the relevant fingerprints for the application of the relevant EU Regulation no. 604/2013. The latter, it established a mechanism criteria that determine the responsibility of the Member State for the examination of the application for international protection. It is presented to the Member States by a citizen of a third country, a stateless person according to Eurodac data.

The ratio that is included in letter f) is related to the presentation of the repeated application for international protection. It is considered inadmissible according to art. 40, par. 5. It is expected that the repeated application has not followed a control examination in a preliminary examination. This does not emerge from new elements of the applicant and/or resulting from Directive 2011/95/EU which is considered inadmissible according to Art. 33, par. 2, letter. d).

The analysis of the conduct comprises multiple questions that are repeated and are explicitly considered towards abusive behavior that prevented the legal instruments of the CEAS.

Letter j) prevents the applicant to obtain international protection for reasons of national security and public order of a Member State according to its domestic law.

The multiple conducts included in Art., 31, par. 8 of the Procedure Directive, frame the categories of abusive conduct according to some cases that are taken in consideration in letter b). In fact, letter b) includes the case where the applicant comes from a safe country of origin and as also provides letter f) the hypothesis that the applicant has submitted the repeated application. From these aspects and from a regulatory level, the term abuse of rights is used as a classificatory category which constitutes the scope of fraud in an understandable way.

The case of inadmissible questions

Art. 33 of Directive 2013/32/EU takes into consideration and classifies the hypotheses foreseen in Dublin III regulation. Especially, it considers applications requesting international protection which are considered inadmissible (Vedsted-Hanses, 2023).

In this regard, according to art. 33:

"(...) a) another Member State has granted international protection; (b) a country which is not a Member State shall be considered the applicant's country of first asylum in accordance with Article 35; (c) a country which is not a Member State is considered a safe third country for the applicant in accordance with Article 38; d) the application is a repeated application, if no new elements or findings have emerged or have not been presented by the applicant for the purposes of the examination aimed at ascertaining whether the applicant can be attributed the qualification of beneficiary of international protection pursuant to the 2011 Directive /95/EU; or (e) a dependent of the applicant submits an application, having consented, in accordance with Article 7(2), to his or her case being part of an application lodged on his or

her behalf and there are no elements relating to the person's situation dependents that justify a separate application (...)"[107].

The determining authority decides on the admissibility of an application for international protection through a personal interview[108].

The applicant's right to an appeal before the relevant judge is guaranteed by Art. 46, par. 1, letter. a)[109]. Without automatically authorize the applicant to remain in the territory of the Member State, the competent national judge adopts an official decision accepting thus the applicant's request[110].

107Proposal for a Directive of the European Parliament and of the Council on minimum standards for the procedures applied in Member States for the purposes of granting and withdrawing international protection (recast), op. cit.

108See art., 42 of Directive 2013/32/EU.

109Paragraph 2 affirms that: "(…) persons deemed by the determining authority to be eligible for subsidiary protection are entitled to an effective remedy under paragraph 1 against a decision to find an application in relation to refugee status inadmissible (…) subsidiary protection status granted by a Member State offers the same rights and benefits as refugee status under Union and national law, that Member State may deem an appeal to be inadmissible against a decision deeming an application inadmissible in relation to refugee status due to the applicant's insufficient interest in continuing the proceedings (...)". See also: CJEU, C-662/17, E.G. v. Republic of Slovenia of 18 October 2018, ECLI:EU:C.2018:847, published in the electronic reports of the cases, par. 50: "(…) exclusion of the right to an effective remedy must be interpreted as meaning that it can be applied where there is an effective identity between the rights and advantages offered by the status conferred by subsidiary protection, granted by the Member State in question, and those recognized by Union law and by national law applicable to refugee status (…)".

110Article 46, par. 6 of the Procedures Directive, lett. d) also refers to cases of inadmissibility according to letters a), b) and d) of art. 33, par. 2.

(Follows): What conducts are included in inadmissibility cases?

The abusive conduct is considered inadmissibility case in letter a):

"(...) another Member State has granted international protection. In this case, we are faced with the situation in which an asylum seeker has proposed an application for international protection and obtained recognition of one of the two statuses provided for by the Qualification Directive, but has then moved away from the Member State responsible for the procedure for examining his/her application, to propose a new one in a different Member State (…)"[111].

This hypothesis applies the supplementary rule of the Dublin III regulation. In this case, the Member State grants the relevant international protection to a citizen of a third country or to a stateless person considered applicant according to art. 2, letter. c) of the Dublin regulation (Hruschka, Maiani, 2023).

For the asylum application which is prior to recognition for international protection by a different state the Union can directly adopt the decision of inadmissibility according to Art. 33 of the Directive as a transfer decision and pursuant to Art. 26 of the Dublin regulation[112].

111 Article 46, par. 6 of the Procedures Directive, lett. d) a.

112 CJEU, order in case: C-36/17, Ahmed of 5 April 2017, ECLI:EU:C:2017:273, published in the electronic reports of the cases, par. 39. The decision of inadmissibility of the application concerning international protection according to art. 33, par. 2, lett. a) of the Directive which legitimizes bringing the appeal according to art. 46, par. 3 of the same Directive and the factual and legal elements.

In this case, the subject is a beneficiary for asylum in a specific country who comes from a third country and where the right to submit an asylum application and/or a new application means examination on the merits. Letters d) and e) of the relevant rule take into consideration the necessity on the merits of the request which translates it as a reiterated, qualified request, made with reference to the hypothesis of a request which was presented by a dependent person and which thus justifies the request in a separate manner on the part of the latter[113].

In the European Commission v. Hungary case of 16 November 2021 the CJEU decided for a number of obligations arising from the Procedures Directive and the Reception Measures Directive[114].

According to the CJEU:

"(…) Hungary would have: a) introduced a new reason for the inadmissibility of asylum applications which is added to the reasons expressly provided for by Directive 2013/32 (i.e. the hypothesis in which the applicant arrived by crossing a country where he is not exposed to persecution or where an adequate level of protection is guaranteed); b) configured as a crime the organizational activity carried out in order to allow the initiation of an asylum application procedure by people who do not satisfy the criteria for the right to asylum established by national law and adopting measures which entail

113 CJEU, C-652/16, Ahmedbekova of 4 October 2018, ECLI:EU:C.2018:801, published in the electronic reports or the cases, par. 81, "(…) the ground of inadmissibility set out in Article 33(2)(e) of Directive 2013/32 does not concern a situation (…) in which an adult presents, for himself and his minor child, a well-founded application for international protection, in particular, on the existence of a family link with another person, who has separately submitted an application for international protection (…)".

114 CJEU, C-821/19, European Commission v. Hungary of 16 November 2021, ECLI:EU:C:2021:930, published in the electronic reports of the cases, par. 96.

restrictions on persons subjected to criminal proceedings or sanctioned for such a crime (...) a further reason for inadmissibility of the asylum application would have been justified by the need to repress abuses, as the law currently in force would not have been sufficient to best pursue this objective (...)"[115].

The CJEU tried to expressly provide for the relevant provision which considers the application for international protection as an inadmissible application. Hungarian legislation did not fall within the situations and the reasons for the inadmissibility of a submitted asylum application, considered legitimate.

The existence of a domestic legislation is mentioned in CJEU: "(...) individuals cannot fraudulently or abusively avail themselves of the provisions of Union law (...) deny the benefit of the provisions of Union law where these are invoked not in order to achieve the objectives of the provisions themselves, but rather in order to enjoy an advantage deriving from Union law even though the conditions for enjoying it are only formally respected (...) the possibility for national authorities to sanction persons or organizations mentioned by them if the latter adopt behaviors that constitute an exercise of the right of access to applicants for international protection for purposes incompatible with the objectives for which such a right of access is recognized to them (...) Member States must be allowed to sanction the fraudulent or abusive practices committed by legal consultants or other consultants in the context of the services they provide for the benefit of said applicants (…)"[116].

In fact, the CJEU, as well as the European Commission, did not contrast the criminal law of behavioral sanctions, which are part of the struggle of Member States, with abusive and fraudulent practices, but went beyond pursuing the relevant objectives, thus repressing conducts that could not be considered as such.

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115 Proposal for a regulation of the European Parliament and of the Council establishing a common international protection procedure in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final, op. cit., par. 30.

116 CJEU, C-821/19, European Commission v. Hungary of 16 November 2021, op. cit.

The CJEU has placed the abuse of rights as a general principle of prohibition of abusive practices in other sectors of the Union.

The general principle of abuse of rights in relation to the provisions which are highlighted by configuring ex ante a conduct as abusive, is a precise and clear interpretative approach on the part of the CJEU without making specific references to the cases that are different from each other.

Trying to justify the adoption of national provisions that express abusive behaviors through a restrictive interpretation is a way that forgets the true nature of abusiveness. This conduct has rhetorical value and legal meanings. The non-technical use of this notion through the preliminary ruling justifies the choices of the CJEU to deal with abuse in the field of asylum.

In practice, the General Advocate in C-72/22 PPU and C-821/19 cases have excluded the abusive conduct. This hinders the introduction of grounds of inadmissibility in asylum applications[117].

In this regard, the right to abuse is understood as a limit. In fact, states introduce provisions with anti-abuse functions that concern and exclude European standards.

In this event, the abuse coincide with an abusive conduct that consists of a right, that respects the provisions that were

117CJEU, C-821/19, European Commission v. Hungary of 16 November 2021, op. cit.

previously in force in the same law. The CJEU admits the operation of a general principle of prohibition of abusiveness as a reference that defines the test on abuse, which legitimizes the form of behavior that is compliant with a law that is substantially contrary to it.

The CJEU recognized not in all cases that the value of prohibition of abuse of rights is invoked according to the test that was created in the Emsland-Stärke case. This test has attributed a legal meaning into the non-exclusively abusive practices and a role as a general principle of law in the field of asylum where the operation and limits are well defined as cases that refer to other principles. Such practices are highlighted through the function of the CJEU and the ECtHR. They have covered a leading role within a European space where the concept of abusiveness includes evident conduct as an approach that tends to affirm the role of abuse in general principles of law of the Union.

The principle of non-refoulement is linked to fundamental rights which are enshrined in the CFREU, especially in art. 18 (Kellerbauer, Klamert, Tomkin, 2019).

“Country of first asylum” and “safe third country”

The notions of country of first asylum and of safe third country referred to in Articles 35 and 38 of the Procedures Directive.

Such notions are the basis of inadmissibility according to Art. 33, par.2, letter. b)[118]. Both notions are not the same. If a country is considered as a country of first asylum by the applicant, it is recognized for its refugee status[119] and/or for its sufficient protection (Strik, 2008)[120] which is at least part of the non-refoulement notion that is provided for the territory which is located the applicant[121]. The qualification of a safe third country, instead, includes the conditions that are part of article 38.

The two regulations (Zimmermann, Do Schner, Machts, 2011; Vedsted-Hanses, 2023) must be read together as required by Art. 35, par. 2 which states:

"(…) the concept of country of first asylum to the particular circumstances of an applicant, Member States may take into account Article 38, paragraph 1 (…)" (Vedsted-Hanses, 2023).

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118 See recital n. 43: "(…) Member States should examine all applications on their merits, i.e. assess whether the applicant in question qualifies as a beneficiary of international protection under Directive 2011/95/EU, unless otherwise provided for in this Directive, in particular if another country can reasonably be expected to process or provide sufficient protection (…) Member States should not be required to assess the merits of the application for international protection if the country of first asylum has granted the applicant refugee status or has otherwise granted sufficient protection and the applicant will be readmitted to that country (…) as provided for in paragraph 3 of Article 38, Member States shall inform the applicant and provide him with a document informing the authorities of the third country, in the language of the third country, that the application has not been examined in merit (…)".

119 CJEU, C-585/16, Alheto of 25 July 2018, ECLI:EU:C:2018:584, published in the electronic reports of the cases, par. 143.

120 UNHCR (Provisional Comments on the Proposal for a Council Directive on Minimum Standards on Procedure in Member States for Granting and Withdrawing Refugee Status, Council Document 14203/04, Asile 64, of 9 November 2004: https://www.unhcr.org/media/unhcr-provisional-comments-proposal-council-Directive-minimum-standards-procedures-member

121 According to Art. 33, par. 2, letter. d) where it is understood that during the appeal the concept of the country of first asylum on the part of the person who was interested can prevent a decision of inadmissibility.

Thus, the interpretation of the law with the treatment standards identified according to art. 38 suggests that a country can be considered as a country of first asylum only if it can ensure a form of protection that affects compliance with the criteria for the relevant treatment.

The concept of the safe third country according to the provisions of art. 38 considers that the appeal is carried out when a third country is considered safe and can be appealed for the operation and procedural consequences that derive from its inadmissibility (Boeles, Den Heijer, Lodder, Wouters, 2014).

The relevant provisions come from the repatriation of the subject and thus do not represent the direct refoulement according to Directive 2011/95/EU[122] and/or the related refoulement which is prohibited by the Geneva Convention from the European Convention of Human Rights (ECHR) and from the Charter of the Fundamental Rights of Human Rights (CFREU)[123].

Instead, letter e) affirms:

"(...) the possibility of requesting refugee status and, for those recognized as refugees, obtaining protection in accordance with the Geneva Convention (...)" ,

122 According to lett. a) and b): "(...) there must be no threats to his life and freedom for reasons of race, religion, nationality, political opinions or membership of a particular social group (letter a) (...) the risk of serious harm defined in Directive 2011/95/EU (…)" (letter b).

123 According to lett. c) and d): "(...) the principle of "non-refoulement" in accordance with the Geneva Convention (...)" (letter c) "(...) the prohibition on removal in violation of the right not to suffer torture or cruel, inhuman or degrading treatment, sanctioned by international law (letter d) (…)".

thus including the safe third country for other conditions which exemplify par. 2 of the same standard. Domestic regulations are in accordance with letter. c), that is,:

"(...) with an individual examination, whether the third country concerned is safe for a given applicant and which at least allow the applicant to challenge the application of the safe third country concept on the grounds that the third country is not safe in your specific case (...)".

The relevant requirement is in accordance with international law standards. It implies that the security of the country is assessed with reference to the relevant standards which are set by the Geneva Convention and which respect those arising from the provisions of the ECHR and the CFREU. The person who is interested can be removed and according to the letter. a):

"(…) dispute the existence of a link with the third country by virtue of which it would be "reasonable for that person to travel to that country (…)".

Also according to the recital n. 44 the legitimacy of a Member State can evaluate the application for international protection which coincides with the provision that the applicant who has the relevant sufficient link with a third country can request the relevant protection from a third party in a territory that the same object can be admitted or readmitted[124]. This legitimizes the return which does not consist of the subject crossing to a third

124Art. 38, lett. d) par. 2: "(…) the possibility for the Member State to introduce rules on the method by which the competent authorities ascertain that the concept of safe third country can be applied to a specific country or to a specific applicant. This method includes case-by-case examination of the safety of the country for a given applicant and/or national designation of countries that can be considered generally safe (…)".

country[125].

Par. 4 provides that the security clause establishes that the third country is considered safe and does not grant the applicant entry into its territory. In such a case the Member States assure the interested party an examination procedure. The asylum application respects the relevant principles and the guarantees included in Chapter II of the Procedures Directive legitimizing the relative denial of the procedure of the same instance.

Art. 39 of the Directive also introduces the notion that includes the safe European third country. This is a rule which establishes that states provide for the examination of the application for international protection and the safety of the subject, ascertaining to the competent authority whether he or she has illegally entered the territory of a country considered super safe. This is a qualification that ensures compliance with the state of origin, parameters of par. 2 of the same provision which includes:

"(…) a) the ratification and observance of the Geneva Convention without

125CJEU, C-564/18, LH-Bevándorlási és Menekültügyi Hivatal (Tompa) of 19 March 2020, ECLI:EU:C.2020:218, published in the electronic reports of the cases, par. 48 and 49: "(...) must adopt rules that provide not only the existence of a "link", within the meaning of that provision, but also the method by which to ascertain, on a case-by-case basis, based on the specific circumstances of the applicant for international protection , whether the third country concerned meets the conditions to be considered safe for that applicant, as well as the possibility for that applicant to contest the existence of such a link (...) such an obligation could not be justified if the mere transit of the protection applicant international through the third country concerned constituted a sufficient or significant link for this purpose (…) these rules, like the individual examination and the possibility for the applicant to contest the existence of the link that the aforementioned rules must explicitly provide for, would be devoid of any usefulness (...)".

geographical limitations; b) the legislative preparation of an asylum procedure; c) the ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms and compliance with its provisions, including the rules regarding effective remedies (…)".

These are conditions that allow the relevant explanation and reason that refers to the notion of the safe European third country when a state is part of the Council of Europe and should apply the relevant provision (Vedsted-Hanses, 2023).

"Safe country of origin"

Directive 2005/85/EC as well as Art. 36 of the Procedures Directive included with modifications the concept of safe country of origin. According to the CJEU:

"(…) European rules on safe countries of origin establish a particular regime of examination [of the application for international protection] based on a form of rebuttable presumption of sufficient protection in the country of origin, which can be refuted by the applicant indicating imperative reasons relating to his particular situation (...)"[126].

The notion is used and applied by European states before the Directive Procedures came into force (Martenson, McCarthy, 1998; Carvalho, 2016)[127], thus applying a general level. The security of the applicant's country of origin is considered to ascertain ex post, establish the application for protection and verify the circumstances hindering one's repatriation as a situation that evaluates ex ante and in a general way and not

126CJEU, C-404/17, A. of 25 July 2018, ECLI:EU:C:2018:588, published in the electronic reports of the cases, par. 25.

127It allows that Member States have the right to also pre-establish other rules of safe origin that respect and establish domestic law as well as further rules and modalities that are inherent in the application of the notion of safe country of origin thus respecting the provisions contained in the Directive procedures.

specific way the attempt of an unauthorized access to a system of general international protection. A third state as a safe country of origin presumes safety and does not exempt the Member State from a relevant individual examination having to do with the applicant's asylum application (Nur Osso, 2023)[128].

This approach does not have an absolute and precise character[129] because the relevant lists are subject to review by the Member States as defined by Art. 37, par. 2. On the other hand as defined by art. 42:

"(…) the assessment underlying the designation can only take into account the general civil, legal and political situation in that country whether in that country those responsible for persecution, torture or other forms of inhuman or degrading punishment or treatment are actually subject to sanctions if found guilty (…)".

This allows an applicant to take into account through a demonstration the valid reasons that he considers a country to be safe. As foreseen by art. 36, par. 1, the applicant should come from a country considered safe. A citizen and/or a stateless person who has regularly resided in that country can also ask:

"(...) reasons to believe that the country of origin is not safe in the specific circumstances in which the applicant finds himself with regard to his qualification as a beneficiary of international protection pursuant to Directive 2011/95/EU (...)".

According to art. 37 countries of origin respect Annex I of the Procedures Directive. A state is considered safe country of origin:

128ECHR, Research Division, Articles 2, 3, 8 and 13. The concept of a "safe third country"in the case-law of the Court, 2018.

129CJEU, N.S. and others, op. cit.,; C- 578/16 PPU, C. K. and others of February 2017, ECLI:EU:C.2017:

"(…) of the application of the law within a democratic system and of the general political situation, it can be demonstrated that there is generally and consistently no persecution as defined in Article 9 of the Directive 2011/95/EU, nor torture or other forms of inhuman or degrading punishment or treatment, nor danger due to indiscriminate violence in situations of internal or international armed conflict (…)".

There is no obligation for Member States to introduce this concept in their own domestic law[130].

Directive 2005/85/EC also provided for the minimum common list of third countries which are considered by the Member States as safe countries of origin according to the resolution of the Council obtained by qualified majority and as adopted by the proposal of the Commission and the consultation of the European Parliament which implied a general notion of application[131].

According to Annex I, the introduction of the national list of third countries that are considered safe is a form of protection when the mistreatment that is offered has been considered in accordance with certain stable points. Thus the relevant verification:

"(...) b) respect for the rights and freedoms established in the ECHR and/or in the International Covenant on Civil and Political Rights and/or in the United

130 Proposal for a Directive of the European Parliament and of the Council on minimum standards on procedures in Member States for granting and withdrawing international protection (Recast)-(SEC(2009) 1377), p. 16: https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A52009PC0554

131 CJEU, C-133/06, European Parliament v. Council of the European Union of 6 May 2008, ECLI:EU:C:2008:257, I-03189, "(…) annulment decision, Article 30 remained in force, which provided for the faculty of Member States to maintain in force or introduce legislation which allows, in accordance with Annex II, to designate at national level third countries (...) as safe countries of origin for the purposes of examining asylum applications (...)".

Nations Convention against Torture; c) compliance with the principle of non-refoulement, as established in Article 33 of the 1951 Geneva Convention; (d) the establishment of an effective reminder system against violations of those rights and freedoms (…) carried out on the basis of a number of sources of information, including in particular information provided by other Member States, EASO, UNHCR, by the Council of Europe and other competent international organizations and its outcome (...) must be notified to the Commission (...)"[132][133].

The applied discipline and the concepts of country of first asylum and safe third country have to do with the possibility of applying an accelerated procedure, in the event that Art. 31, par. 8 of Directive 2013/32/EU, the provisions of a procedural nature and Art. 46, par. 6 have rejected the asylum application as unfounded after the examination conducted and the methods for the procedures followed that derogate and automatically imply the applicants to remain in their territory after the expiry of the deadline for exercising their right to an effective appeal. In such a case the right is exercised within a set deadline and before the outcome of the appeal. Procedural limits and guarantees may

132CJEU, C-133/06, European Parliament v. Council of the European Union of 6 May 2008, op. cit.

133Proposal for a regulation of the European Parliament and of the Council establishing a common list of safe countries of origin for the purposes of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for the purposes of granting and withdrawing international protection, and which amends Directive 2013/32/EU, COM(2015) 452 final, 9 September 2015: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM:2015:0452:FIN; Proposal for a regulation of the European Parliament and of the Council establishing a common international protection procedure in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final, op. cit., op. cit.. See article 37 of Directive 2013/32/EU, paragraphs 3 and 4. according to recital 47: "(…) is necessary in order, on the one hand, to allow the Commission itself to carry out a periodic review of the use of these concepts by the Member States, and, on the other, to prepare a possible new harmonization in the future (…)".

entail and include implications that evaluate in each specific case the specific situation of each asylum seeker excluding its application in the concept of a safe country of origin[134].

This application with the related mechanism involves a transformation of the non-entrée practices, and at the same time of those that are not:

"(...) invisible (...) means to ensure that refugees are never in a position to assert their legal right to protection (…)" (Hathaway, Neve, 1997; Costello, 2005).

The qualification of a country of origin as a safe third country also implies the relative possibility for the application to be inadmissible according to Art. 38 of the Procedures Directive.

As regards the repeated requests in collaboration with the concepts of safe country of origin, country of first asylum and safe third country, these are behaviors that assimilate into the category of hypothesis called of the abusive rule appropriation and which characterizes the case of abuse in the application of the relevant legislation of the Union and in the conditions that are required for the operation of the regulation from the point of view of the Union, thus enjoying rights that cannot be

134CJEU, C-175/11, D. and A. of 31 January 2013, ECLI:EU:C:2013:45, published in the electronic reports of the cases, par. 74 and 75: "(...) to avoid discrimination between asylum seekers from a specific third country whose applications would be examined on a priority basis and nationals of other third countries whose applications would be examined under the ordinary procedure, such priority procedure must not deprive the applicants of the first category of guarantees required by Article 23 of Directive 2005/85, which apply to any procedural form (...) asylum seekers must be able to benefit from sufficient time to collect and present the elements necessary to support their applications (…) allowing the determining authority to carry out a fair and complete examination of such applications and to ensure that applicants are not exposed to danger in their country of origin (…)".

legitimized and entitled.

The repeated application allows the relevant subject of the stay on its territory of the Union to enjoy the right that is granted in the system of the Union which qualifies asylum seekers. The submission of the asylum application advances in a necessary way the protection of the safe country of origin and the rights that are connected to the status of applicant for international protection and the right of residence that is responsible for the application and the reception measures. The conduct does not allow reference to the sectors of law where the reiterated nature for an application to the origin of the safe country of origin and safe third country does not represent requirements that enjoy the benefits associated with the qualification of the asylum seeker.

Such attitudes are not equivalent to the attempt which artificially prepares the prerequisites for the operation of a specific guarantee of the legislation of the Union which affirm the reference of secondary movements and multiple applications by subsisting provisions and attitudes which cannot be considered lawful.

What conduct is controlled by the previous paragraphs?

According to the concepts analyzed in the previous two paragraphs, it is understood that situations are contested when the subject who comes from a country can enjoy a form of

protection admitted into its own territory and/or from a third state and/or of origin, i.e. can have a form of protection by submitting an asylum application to a Member State. Thus, the origin of a subject shows the existence of a real need for protection within the Union, giving the possibility of carrying out an examination of the relevant asylum application as well as rejecting the procedure and applying the accelerated procedure which is provided for by Art. 31, par. 8 of the relevant Directive 2013/32/EU.

The choice of a behavior according to these conditions promotes the application for asylum in one's own territory of the Union, thus implying the pre-establishment of a series of conditions that seek to legitimize and aspire the recognition of the refugee status and the subsidiary protection that he needs. This is not a violation of the law and the obligation of a person to apply for asylum does not come from a safe third country and/or a country where he has obtained recognition of the right to asylum.

Consequently, art. 34 established that the right of the subject to avoid an answer of inadmissibility of his application can take a specific interview which brings out any reasons that consider the personal situation and applies art.33 for reasons of inadmissibility. Moreover, art. 35 allows the interested party to challenge the application of the country of first asylum where the specific conditions of art. 38 establish that the third country

does not allow the applicant to enter its territory by acting on the provisions of the asylum applications and the related guarantees provided.

The presumed mechanism of the concepts that presuppose the violation of the conduct of the asylum seeker in the exercise of a right who has access to the procedure for examining asylum applications obtain the setting and request for a subsequent interview to the granting of the form of international protection from, thus obtaining access to the relevant procedures where the same subject makes use. The recognition of refugee status and/or subsidiary protection may have the right to make use of the procedural guarantees that are connected to the recognition of sufficient forms for protection. The related procedures similar to the applications consider the migrant of the abusive migratory project in a reductive sense of individual guarantees.

Abuse of rights can also be classified in a category which is related to the forms of abusive rule appropriation which has as its presupposition the attempt to benefit from the European discipline in an artificial way of the conditions required for its operation and carrying out an attempt at abusive access to the general system of international protection.

The repeated questions

Repeated applications are defined by Art. 2, par. 1, letter. q) of Directive 2013/32/EU[135], as an application for international protection which presents and adopts the final decision of a previous application. This includes the case of the applicant that has withdrawn the application. In case of rejection of the request, art. 28, par. 1 puts to a logical stage the reasons which are necessary for the applicant to withdraw the application and renounces the determining authority to suspend the control and evaluation. The determining authority judges that the application which is unfounded according to a precise and suitable linear examination of Art. 4 of the Directive 2011/95/EU can reject the application.

Art. 40 of the Procedures Directive refers to a repeated application:

"(...) the Member State concerned is called upon to examine the further declarations or elements of the repeated application in the context of the examination of the previous application or the examination of the decision under review or appeal, to the extent that the competent authorities can take into account all the elements underlying the further declarations or of the repeated request in this context (…)".

In this regard, the CJEU also spoke about further declarations according to Art. 30, par. 1 of the Directive 2013/32. In this case the applicant invokes the appeal procedure as grounds for

135This is a dispositive clarification that has been well defined by the Directive 2005/85/EU to attribute the relevant support at a regulatory level to the modification proposal to apply and standardize the changes to the rules regarding repeated applications.

international protection and the events, threats that verify the adoption of the decision under appeal[136]. About this qualification the CJEU affirms that:

"(...) the judge hearing the appeal is required to examine this plea in the context of the examination of the decision which is the subject of the appeal, provided however that each of the "competent authorities", which include not only that judge but also the determining authority has the possibility to examine, in this context, that further declaration[137] (…); (a) that submitted by a dependent person after having agreed, in accordance with Article 7(2), to have his or her case part of an application submitted on your behalf; b) that presented by an unmarried minor after an application has been submitted in his name pursuant to Article 7, paragraph 5, letter c) (…) the competent authority will be called upon to carry out not only the existence of new elements possibly useful for the evaluation of the asylum application, but will also concern the existence of reasons that allow us to believe that the facts connected to the situation of the dependent person or unmarried minor justify a separate application (...)"[138].

The repeated application is not the request for recognition of international protection where the applicant has refused recognition of refugee status by a third state[139]. In the Bundesrepublik Deutschland case (Demande d'asile rejetée par le Danemark) of 2022[140], the CJEU stated that:

136CJEU, C-652/16, Ahmedbekova of 4 October 2018, op. cit., par. 99.

137CJEU, C-652/16, Ahmedbekova of 4 October 2018, op. cit., par. 98.

138CJEU, C-652/16, Ahmedbekova of 4 October 2018, op. cit., par. 99.

139CJEU, C-8/20, L.R. of 20 May 2021, ECLI:EU:C:2021:404:404, not yet published, par. 40, 41: "(…) the existence of a previous decision of a third state, which rejected an application aimed at recognizing refugee status, as provided for by the Geneva Convention, does not allow it to be classified as a "repeated application", pursuant to the Article 2(q) and Article 33(2)(d) of Directive 2013/32, an application for international protection, within the meaning of Directive 2011/95, addressed by the interested party to a Member State after adoption of this previous decision (…)".

140CJEU, C-497/21, Bundesrepublik Deutschland (Demande d'asile rejetée par le Danemark) of 22 September 2022, ECLI:EU:C:2022:497, not yet published, par. 55 and 43: "(…) an application for international protection presented to the competent authorities of the Kingdom of Denmark in accordance with the internal provisions of that Member State is unquestionably an application "presented to a Member State", the fact remains that it does not constitute an application aimed at obtaining the refugee status or subsidiary protection status, pursuant to Directive 2011/95 since

"(...) excluded the possibility of qualifying as a repeated application, an application for international protection presented to a Member State by a citizen of a third country or a stateless person, subsequent to a previous application for asylum presented to the Kingdom of Denmark and rejected by the latter Member State (...) will not be treated as a "repeated application" and, therefore, will not be subjected to procedure referred to in articles 40 and 41, the new application presented by the person who presents himself to the competent authority, after the decision has been taken to suspend the examination[141] of his previous application due to suspicion of implicit withdrawal of the same (...)[142] an asylum seeker submits a repeat application without adducing new evidence or arguments, it would be disproportionate to impose on Member States the obligation to carry out a complete new examination procedure (…) they should be allowed to reject an application as inadmissible in accordance with the principle of res judicata[143]. The "repeated" nature of the asylum application implies a series of procedural consequences, which, as will be highlighted, reveal a deterrent intent with respect to the implementation of certain conduct (...)".

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according to the Protocol on the position of Denmark, that Directive does not apply to the Kingdom of Denmark, as, moreover, recalled in recital 51 of that Directive (…)".

141Article 28, par. 1 of the Procedures Directive: "(...) a) the applicant did not respond to the request to provide essential information for his application pursuant to Article 4 of Directive 2011/95/EU nor did he appear at the personal interview referred to in the articles 14 to 17 of this Directive, unless it demonstrates, within a reasonable period of time, that it was unable to do so due to force majeure; absconded or left without authorization from the place where he lived or was detained, without contacting the competent authority within a reasonable time or, after a reasonable time, has not complied with the duty to appear or other reporting obligations, unless the applicant demonstrates that this was due to circumstances beyond his control (…)".

142Article 28, par. 2 of the Procedures Directive: "(...) Member States provide for a deadline-in any case not less than nine months-beyond which a case can no longer be reopened or the new application can be treated as a repeated application and subjected to the procedure referred to in the Articles 40 and 41 (…) Member States may provide that the applicant's case is reopened only once (…)". Article 18 of the Dublin III Regulation affirms that: "(…) articles 23, 24, 25 and 29, of a third-country national or a stateless person who has withdrawn his application during examination and who has submitted an application in another Member State or who is in the territory of another Member State without a residence permit], where the competent Member State has interrupted the examination of an application following the withdrawal of the latter by the applicant, before a decision on the merits of first instance, that Member State shall ensure that the applicant is granted the right to request that the examination of the application be completed or to submit a new application for international protection, which will not be treated as a repeat application referred to in Directive 2013/32/EU (…) Member States shall ensure that the examination of the application is completed (...)".

143Recital n. 36 of the Directive 2013/32/UE.

The same reasoning follows par. 2 of the relevant rule under examination for the admissibility of a repeated application. It has assumed as a preliminary examination and ascertained that new elements[144] emerged from the applicant regarding a possible qualification of the beneficiary of international protection according to Directive 2011/95. Thus, new elements were carried out by the applicant which increase the probability that he is qualified for international protection according to Directive 2011/95/EU and the application was thus re-examined from scratch[145]. If this were not the case, the repeated application which is not subjected to further examination is considered inadmissible according to Art. 33, par. 2, letter. d).

In this case the repeated requests are not justified by a further integration which respects the elements originated with the first instance and represented an inadmissible category of requests.

The Member States establish the application which is subjected

144CJEU, C- 921/19, Staatssecretaris van Justitie en Veiligheid of 10 June 2021, ECLI:EU:C:2021:478, not yet published, par. 36. C-18/20, Bundesamt für Fremdenwesen und Asyl of 9 September 2021, ECLI:EU:C:2021:710, not yet published, par. 44: "(…) the notion of "new elements or [of] findings" which have emerged or have been put forward by the applicant", pursuant to this provision, includes the elements or findings which have arisen after the definitive conclusion of the proceedings which had as their object the previous application for international protection as well as the elements or findings that already existed before the conclusion of such proceedings, but which were not invoked by the applicant (...)".

145Article 40, par. 3, Directive 2013/32/EU. This article allows Member States to see the repeated application that has been subjected to scrutiny for other reasons. Thus the par. 4 of the Member States establish that the application is subjected to further examinations if the applicant without fault can rely on the previous procedure and the situation that was exposed according to paragraphs 2 and 3 of the same article 40. Thus a right to an effective remedy is exercised according to what is foreseen of article 46.

to further examination to qualify it as a repeated application. The same applies when the applicant through no fault of his own has failed in a previous procedure of a relevant argumentation of elements indicative of his suitability which has qualified as a beneficiary the international protection pursuant to art. 46[146]. This concerns an applicant who presents elements of impossibility, i.e. trace elements from the first application and elements necessary for the application for international protection which are available to the applicant.

The qualification of the repeated application takes into consideration what Art. 9, par. 2 of the Procedure Directive[147] pre-establishes. It also dedicates the right to remain in the Member State the examination of the application. This rule takes into consideration the possibility that Member States exclude the recognition of the guarantee who have submitted the repeated application according to art. 41. It is clarified that:

"(…) such derogations may be provided for by the legislation of a Member State when a person: a) has submitted a first repeated application, which is not further examined pursuant to Article 40, paragraph 5, for the sole purpose of delaying or preventing the execution of a decision which would lead to his imminent removal from the Member State in question; or (b) manifests its intention to submit another repeated application in the same Member State following a final decision deeming a first repeated application inadmissible pursuant to Article 40(5), or following a final decision rejecting that application as unfounded (…) may derogate from: a) the deadlines normally applicable to accelerated procedures (four weeks), if the examination procedure is accelerated pursuant to Article 31, paragraph 8, letter g); b) the

146Article 40, par. 4 of the Directive 2013/32/UE.

147The repeated request is comparable with surrender and extradition where the person of a Member State is obliged to provide the European arrest warrant to a third country and/or to an international criminal court.

deadlines normally applicable to the admissibility procedures referred to in Articles 33 and 34; and/or (c) Article 46, paragraph 8 (...)"[148].
Article 25, par. 6 provides for the expected treatment of minor and unaccompanied asylum seekers[149], allowing the relevant Member States to introduce restriction limits[150] as well as the related guarantees recognized to the category of asylum seekers in the event that the presence of a repeated application could: "(...) a) apply or continue to apply Article 31, paragraph 8, and, therefore, examine the asylum application through an accelerated procedure and/or carried out at the border or in transit zones; b) apply or continue to apply article 43 - i.e. the rule dedicated to border procedures -, in accordance with articles 8 to 11 of Directive 2013/33/EU (...)".
The guarantees of art. 12, par. 1 ensure that the asylum seeker receives a preliminary examination, which is provided according to the request qualified as a repeated application, thus providing that the Member States establish provisions which are applicable to carrying out preliminary examinations and make it impossible

148Member States authorize the request to remain in their territory at the end of the procedure where the relevant provision to remain in their territory where the authorization is not automatic according to art. 46, par. 6 and 7.

149According to art. 2, lett. e) defines the unaccompanied minor in the reception measures Directive as: "(...) citizen of a third country or stateless person under the age of eighteen (...)". As required by the letter. l) of Article 2 of the Procedures Directive: "(…) enters the territory of the Member States without being accompanied by an adult who is responsible for him by law or by practice of the Member State concerned, until he is actually entrusted to such an adult (…) includes the minor who is abandoned after entering the territory of the Member States. The attention that Member States are required to pay to the best interests of the minor in the application of the Directive is reiterated by recital no. 33 of Directive 2013/32/EU, which also specifies the need to (…) take due account of the well-being and social development of the minor, including her past (...)".

150Art. 31, par. 8 defines the concept of safe third country and the border procedures where according to art. 43 relating to asylum applications presented by minors who are unaccompanied. See the Council Document no. 8958/12, of 24 April 2012, p. 84. The article 25, par. 6, letters a) to d) allows Member States to apply and continue the application of an unaccompanied minor where: "(…) a) accelerated procedures pursuant to Article 31, paragraph 8; b) border procedures pursuant to Article 43; (c) inadmissibility decisions pursuant to Article 33(2)(c) based on the safe third country concept referred to in Article 38; and (d) the principle of the validity under Article 20(3) of the provision of free legal assistance and representation in appeal proceedings; as well as (e) the procedure provided for in Article 46(6) (…) to decide whether the applicant may remain in the territory of the Member State in cases where the appeal does not have an automatic suspensive effect pursuant to Article 46(5) (…)".

for the applicant to access a new procedure and prevent limiting such access. The provisions affirm that:

"(…) a) the establishment of an obligation for the applicant to indicate the facts and to produce the evidence that justify a new procedure; b) the provision that the preliminary examination is based solely on written observations and does not involve any personal interview, with the exception of the cases referred to in Article 40, paragraph 6 (...)"[151].

Article 46, par. 1, letter. a), points ii) of the Procedures Directive together with Art. 33, par. 2, letter. d) affirm that:

"(...) Member States provide that the applicant has the right to an effective remedy (...) against (...) the decision (...) to consider the application inadmissible (...) the competent judge may be required to: a) evaluate the correctness of the inadmissibility decision made by the determining authority, in order, if necessary, to refer the case to that authority for further examination, ensuring compliance with the guarantees provided for in Chapter II of the Procedures Directive; b) following confirmation of the legitimacy of the inadmissibility decision, examine the application on its merits, taking due account of subsequent elements or findings (...) including the oral statements made during the hearing (...)".

What type of conduct do the repeated questions present?

Submitting an application is divided into two distinct moments. In the first phase we have the registration of the asylum application which does not require formalities and takes place within the deadlines established by art. 6, par. 1 and then follows the phase of forwarding the asylum application which implies compliance with provisions of an administrative nature[152].

151Art. 12, 1.

152The relevant Directive refers to and distinguishes between "make an application" and "lodge an application". Proposal for an amendment to a Directive of the European Parliament and of the Council on common procedures for the recognition and withdrawal of international protection status (recast), COM(2011) 319 final, 1 June 2011, Annex, p. 3.

The individual is not prohibited from obtaining the registration of an asylum application where the competent authorities of a specific Member State have forwarded and received communication of a decision not to accept the application and to submit the application for international protection of the same Member State. The ruling of inadmissibility of the subsequent application and the preliminary examination emerges in the new elements and objectives of recognition of the qualification of beneficiary for international protection according to the Directive 2011/95/EU. Thus it is recognized without fault that the relevant facts and evidence in the previous procedure as well as the circumstances before the repeated application introduce a presumption of unfoundedness on the merits of the same.

The rationale of the procedural mechanism of Articles 40-42 of the Procedure Directive considers the objective of Directive 2013732/EU. Art. 6, par. 1:

"(...) guarantee effective, easy and rapid access to the international protection procedure[153] (...) the submission of repeated applications, which "burden" the correct functioning of the asylum system of a Member State, risks delay the moment in which people who actually need international protection (...)[154] are able to submit their applications (…). The applicant failing to disclose

153CJEU, C-36/20 PPU, Fiscal Ministry (Authority likely to receive an application for international protection) of 25 June 2020, ECLI:LEU:C:2020:495, not yet published, par. 82: "(...) Directive 2013/32, in particular that of Article 6, paragraph 1 of the same, (...) consists in guaranteeing effective, easy and rapid access to the international protection procedure (...)".

154Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 final., 21 October 2009, par. 1.1.

elements or findings in the first procedure is strictly linked to his credibility and, specifically, to the presumption that the reiteration of the request is exclusively attributable to the desire to delay the removal from the territory as much as possible (...)"[155].

Thus the application that is presented for international protection also automatically implies the right to remain in one's territory for the entire duration of the relevant procedure[156] except in cases where the proposition of a repeated application is expressly denied (Reneman, 2014; Villiger, 2023)[157].

It is understandable that the use of categories that are examined legally qualify the concept of abuse by highlighting the behaviors examined which allow a subdivision of the behaviors that are taken into consideration into two subgroups. On the one hand we have secondary movements and multiple applications, those repeated by the Member State and those presented by people who come from a safe country of origin and a country of first asylum and/or a safe third country. The relative breakdown highlights the various behaviors that lead to forms of abusiveness and in other cases of abusive rule appropriation.

155CJEU, C-277/11, M.M. of 22 November 2012, ECLI:EU:C:2012:744, published in the electronic reports of the cases, parr. 64 and 65: "(…) cooperation imposed on the Member State, when determining the significant elements of the asylum application, implies (…) concretely that, if, for any reason, the elements provided by the applicant for international protection are not exhaustive, current or relevant, it is necessary for the Member State concerned to actively cooperate with the applicant, at this stage of the procedure, to enable all elements to support the application to be brought together. Furthermore, a Member State is in a more appropriate position than the applicant for access to certain types of documents (...)".

156Article 9 of Directive n. 2013/32/UE.

157ECtHR, Mohammed v. Austria of 6 June 2013, par. 80. Reneman also affirms: "(…) if the subsequent application can prima facie be considered abusively repetitive or entirely manifestly ill-founded may the state make an exception to the right to remain (…)".

There are no new elements regarding asylum applications when they have to do with the reiteration of applications considering in terms of illegality the conduct that risks delaying people who:

"(...) actually need international protection[158] from being in a position to present the own applications (…). The CEAS prepares a series of tools aimed at discouraging such a practice: a) the possibility of using accelerated and border procedures to examine requests that can be classified as repeated applications (with what also follows in terms of procedural guarantees in the event of an appeal; article 31, paragraph 8 and article 43 of Directive 2013/33/EU); b) the right to reject such applications outright, declaring them inadmissible, if not supported by the attachment of new elements or findings relevant for the purposes of the possible recognition of the qualification of beneficiary of international protection pursuant to Directive 2011/95/EU (article 33, par. 2, letters c) and d) of Directive 2013/33/EU); c) the possibility of reducing or revoking the material reception measures provided for by Directive 2013/33/EU (article 20, par. 1, letter c) and par. 3) (…)"[159].

These are principles that fight against forms of abuse.

On the other hand the ECtHR (Rainey, Wicks, Ovey, 2021)[160] accelerates and recognizes the right of Member States of the EU to adopt procedural mechanisms in the case of continuous inflows of migrants[161] thus underlining to ensure the scope of the procedures where the effectiveness of procedural guarantees are

158Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 final, 21 October 2009, par. 1.1

159Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 final, op. cit.

160ECtHR, I.M. v. France of 2 February 2012, parr. 142-148; A.C. and others v. Spain of 22 April 2014, parr. 98-100 and 104.

161ECtHR, I.M. v. France, op. cit., par. 142: "(...) nécessité pour les Etats confrontés à un grand nombre de demandeurs d'asile de disposer des moyens nécessaires pour faire face à un tel contentieux, ainsi que des risques d'engorgement du système (...)".

essential to protect asylum seekers from rejection (Oviedo Moreno, 2020; Villiger, 2023)[162].

Respect for Art. 3 ECHR and Art. 4 of the protocol n. 4 (Villiger, 2023) limits the extent to which states can accelerate the examination of applications for international protection, allowing to ensure a complete, precise picture of the situation and profile of each applicant.

The expression "new elements or findings" is excluded from the repeated application as stated by the CJEU in case A, B and C[163] recognizing the refugee status in the sexual orientation of the applicant. It concerns the elements of the application for international protection under art. 4, par. 1 of the Qualification Directive[164] stating the theme of repeated questions:

"(...) the lack of credibility of an applicant cannot be based simply on the late provision of relevant elements by him, even more so when such elements concern questions relating to identity personal information of an individual (...) the fact that an applicant has failed to attach elements or findings during the first procedure may be due to his particular vulnerability (...)".

162ECtHR, N.D. and N.T. v. Spain of 13 February 2020: "(...) the issue of summary rejections of migrants at land borders, identifying an exception to the principle of non-refoulement, which allows the simultaneous removal of foreigners who, in the absence for justified reasons, have "guiltily" decided to cross the land border irregularly, despite being able to make use of effective channels of access to legal means of entry (...)".

163CJEU, A, B and C, op. cit.

164European Asylum Support Office (EASO), Practical guide: assessing the evidence, March 2015, p. 16: "(…) people whose questions are related to [sexual orientation and gender identity] not accepted in their country of origin, often have to hide their true identity, their feelings and their opinions to avoid shame, isolation and stigmatization, as well as very frequently the risk of violence. Social stigma and feelings of shame can further inhibit the applicant and prevent him from disclosing information that falls within the context of the asylum request. In many cases, the applicant only reveals that they are lesbian, gay, bisexual, transsexual or intersex in a subsequent application (…)".

Regarding the inadmissibility or not of an asylum application as a repeated application, the CJEU excluded:

"(...) the applicability of article 33, par. 2, letter. d), of Directive 2013/32 when it is ascertained that the definitive rejection of the previous application was contrary to Union law[165] (...) the applicant is required to produce all the elements necessary to justify the application, however it is up to the Member State concerned to cooperate with this applicant when determining the significant elements thereof. This obligation of cooperation on the Member State therefore concretely implies that, if, for whatever reason, the elements provided by the applicant for international protection are not exhaustive, current or relevant, it is necessary for the Member State concerned to actively cooperate with the applicant, at this stage of the procedure, to allow all the elements needed to support the application to be brought together. Furthermore, a Member State is in a more adequate position than the applicant for access to certain types of documents (...)"[166].

Regarding an asylum application the:

"(...) application of fundamental rights, first of all, the right to a dignified life, ends up diluting the scope of the case (...) respect for human dignity should imply that no person completely dependent on public assistance finds himself, regardless of his will and personal choices, in a situation of extreme material deprivation which does not allow him to meet his most basic needs such as, in particular, feeding, washing and having accommodation, and which compromises his physical or mental health or which places him in a state of degradation incompatible with human dignity (...)"[167].

165CJEU, FMS and others v. Országos Idegenrendeszeti Főigazgatóság Dél-alföldi Regionális Igazgatóság of 14 May 2020, op. cit., par. 203: "(...) the article referred to must be interpreted in the sense that the existence of a Court ruling declaring the incompatibility with Union law of a national legislation which allows the rejection of an application for international protection as inadmissible, on the grounds that the applicant arrived on the territory of the Member State concerned via a state in which he is not exposed to persecution or a risk of serious harm or in which an adequate level of protection is guaranteed, constitutes a new element relating to the examination of an application for international protection, pursuant to this provision (…)".

166CJEU, C-277/11, M.M. of 22 November 2012, op. cit., par. 65: "(…) would have risked being prosecuted before a military court for having openly criticized the way in which the investigations relating to the 1994 genocide were conducted. The application, however, was rejected on the grounds that the applicant himself did not had been able to demonstrate the existence of sufficient reasons to establish the actual existence of the risk complained of, since his story was not found to be credible (...)".

167CJEU, C-163/17, Jawo of 1st March 2019, op. cit., par. 92. ECtHR, M.S.S. and others v. Belgium and Greece, op. cit., parr. 252 to 263.

In the Haqbin case:

"(...) compliance with these needs excludes the possibility of imposing a substantial sanction, solely on the basis of a reason referred to in Article 20, paragraph 4, of Directive 2013/33, in revoking, albeit temporarily, the benefit of all material reception conditions or material reception conditions relating to accommodation, food or clothing (…)"[168].

Multiple questions and secondary movements

Abusive conduct in secondary movements and multiple applications represents the functioning mechanisms of the CEAS before the Dublin regulation. The related phenomena are explained by the differences between asylum systems and Member States which lead applicants for international protection to move within the territory of the Union and submit a convenient application. Convenience that depends on various factors such as the presence of family ties, economic-social advantages for a specific domestic asylum system and possibility of entering the world of work. Phenomena that presuppose movements from one Member State to another benefiting from the economic, social and working conditions which are similar to hypotheses, in case the interested party is circumvented by domestic legislation and ensures legislation from another Member State as the law of the Union presupposes.

The presence of some common elements are hypothesized for

168CJEU, C-233/18, Haqbin of 12 November 2019, ECLI:EU:C:2019:956, published in the electronic reports of the cases.

asylum seekers, such as:

"(...) i) the existence of a "difference" between the internal regulations outlined within two (or more) different legal systems; ii) the agent's intention to benefit from the application of a different regulation than that which, formally, should be applied to him, as it is considered more advantageous; iii) the "exploitation" of a connecting law of European origin which allows the interested party to "attract" the right of another system and, therefore, to "choose" the law or the other conditions to be subject to (...) i) the existence of forms of abuse of the system is (also) traced back to the absence of complete homogeneity between the systems of the different Member States, which incentivises evasive practices which are contested at an institutional level; ii) the subjective element (...) appears to be deducible from attitudes such as secondary movements, which, tend to be explained by the intention of asylum seekers to obtain the registration of their asylum application in a Member State other than the one competent pursuant to the criteria of the Dublin Regulation (...)"[169].

The exploitation of the law of the Union does not include provisions that allow asylum seekers to be recognized as beneficiaries of international protection in the territory of Member States. The judge issues the nominative document that allows them to remain in a Member State, ascertaining, therefore, that he has not taken a decision that guarantees to the applicants freedom of movement in the territory of the host

169Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Strategic plan on asylum: an integrated approach to protection in the European Union, COM(2008) 360 final, op. cit., par. 145: "(…) the decisions which accept or reject the asylum applications of applicants from the same countries of origin highlight a fundamental problem of the current common European asylum system: even after a certain legislative harmonization at European level, various factors, including the lack of common practices, the different traditions and the diversity of sources of information on the countries of origin, intervene to determine divergent results. This results in secondary movements and this is contrary to the principle of equal access to protection throughout the EU (...) the subjective element outlined in the aforementioned terms requires a case-by-case assessment and that the considerations carried out here presuppose a certain degree of approximation, on the basis of what, in the light of logical reasoning, can represent the id quod plerumque accidit (…)".

Member State as well as to determine their place of residence under certain requirements[170].

The form of international protection includes a right of residence for movement from the country that granted the relevant status in the Member States. Thus, we reach a relative conclusion, i.e. there is no European rule that prohibits applicants and their beneficiaries of international protection from moving within the Union.

There are no provisions that allow subjects to freely move within the EU Member States. The secondary movements and related questions seem to approach behaviors within the scope of categories and hypotheses of abusive rule avoidance, trying to differentiate behaviors that are prohibited in European law and which do not represent legitimate conduct. It is not forbidden and legitimate that the Dublin regulation contrasts phenomena that prohibit being expressed.

The application of the abuse test is focused on some important elements such as the form of the rule, i.e. the natural or legal person who meets the required requirements; the objectives and the proper application of the rule call for behavior on the part of the subject which may cause a result contrary to the rationale of the rule itself; abusive behavior that benefits the application of the rule and also affects the situation of the conditions that are applied. The cases of abuse of rights and access to the asylum

170See: Directive 2013/33/UE, artt. 6 and 7 Directive 2013/32/UE, art. 9.

application in Chapter II of the Procedures Directive as well as procedural mechanisms include other points of reference, investigation and evaluation for abuse of rights.

Through the preliminary ruling procedure of the Irish High Court of 25 March 2019, relating to the KS and MHK case[171], the CJEU attempted to take a position in the application of Art. 15, Directive 2013/33/EU:

"(...) in the context of the reception measures guaranteed to asylum seekers, requires Member States to ensure applicants' access to the labor market within nine months from the date of submission of the application for international protection, in the absence of a first instance decision by the competent authority, unless such a delay can be attributed to the applicant himself (…). The concept of abuse was recalled with reference to the second preliminary question, with which the referring judge - starting from the assumption that Article 15 can only be applied in the case in which a competent authority, effectively capable of adopting a decision on the asylum application within nine months, has not done so due to a delay (…). The rule was applicable to a person in respect of whom a transfer decision had been adopted pursuant to the Dublin III Regulation (…). Competence criteria referred to in Regulation 604/2013, it is necessary to carry out a procedure for taking or taking charge of an asylum seeker, a decision cannot be taken on the application for international protection (...) until the Member State which is required to carry out the transfer has completed it (…). No obligation should arise on Member State to ensure access to work for the applicant pursuant to Article 15 (…). Within the Dublin system an important question of abuse of rights arises, since whoever is recipient of a transfer request in the context of that system is, by definition, a person who, at least to a certain extent, has abused the procedure provided for by the Common European Asylum System (…)"[172].

In particular, the Irish High Court asked:

"(…) in the event that an applicant is susceptible to transfer to another Member State pursuant to Regulation (EU) no. 604/2003 (Dublin III), but such transfer is delayed due to a judicial appeal brought by the applicant, the

171CJEU, joined cases: C-322/19, C-385/19, KS and MHK and others of 14 January 2021, ECLI:EU:C:2021:11, not yet published, op. cit.

172CJEU, joined cases: C-322/19, C-385/19, KS and MHK and others of 14 January 2021, op. cit.

consequence of which is to suspend the transfer by virtue of a suspension order issued by the court, the delay resulting in the processing of the application for protection international status can be attributed to the applicant for the purposes of Article 15 of Directive 2013/33/EU (Directive on reception conditions) (recast), and this in general or in the particular case in which it is ascertained, in the context of the procedure of judicial appeal, that the latter is unfounded, manifestly or otherwise, or constitutes an abuse of process (...)".

The referring judge who constituted a right for the person who requested asylum represented the Dublin transfers and the consequences deriving from the appellant as causes of delay. It is:

"(...) doubly true in the case of abusive or unfounded (...) concept of abuse of rights to describe two behaviors which, despite being completely different, are both placed as the basis of a certain reading of article 15 of the Reception Directive, i.e. the secondary movement and the proposition of an instrumental jurisdictional appeal. In both cases, the abusive nature of the conduct becomes the justification for the interpretative choice promoted by the referring judge, aimed at reducing the scope of application of the guarantee provided for by the rule in question. This "abusiveness" ends up being characterized in different terms (...) the Irish judge has no doubts in identifying the movement of the asylum seeker from one Member State to another, a clear form of abuse of the procedure provided for by the common European asylum system (...) being based on the need for the transfer of the applicant to the effectively competent Member State, can only legitimize the interpretative choice which restricts the scope of operation of Article 15 (...)"[173].

The illegality of the behavioral conduct cannot be found in the conduct itself. It represents a right for the applicant and the intention of the proposition of the appeal that generally suggests a specific assessment, a real intention that contests the provision on the basis of the criteria of the regulation Dublin as an attempt that delays the adoption of a decision on an asylum application

173CJEU, joined cases: C-322/19, C-385/19, KS and MHK and others of 14 January 2021, op. cit.

and thus gains the possibility for positive access to the labor market.

The abusiveness of the second line movement does not reiterate an approach found in various documents of the legal instruments of the CEAS, creating doubts about a hidden abuse through the exercise of the fundamental right as the right of effective redress. Thus, the condition constitutes the rationale of a restrictive legislative interpretation where asylum seekers suggest the idea when faced with an appeal and the competent authorities call to carry out and verify the conduct as instrumental behaviour.

It is an evaluation that leads and promotes objectives that benefit from the foundations of art. 15 as a benefit that excludes the competent authority and which applies a general principle of prohibition of the abuse of rights.

Observing the norm

The procedural system of Directive 2013/32/EU guarantees citizens of third countries the relative access to the asylum application through the provision of presenting requests for asylum protection as well as requests that also recognize the transit zones of the relevant Member States[174]. It is foreseen by the individual Member States that the relevant applications

174See, Directive 2013/32/UE, art. 3.

introduced at a specific place after designation[175] as well as the registration of requests for protection by the competent authorities within the deadlines set by art. 6 provides that asylum seekers forward the withdrawal and renunciation of the relevant requests "as soon as possible".

In particular, art. 13 obliges the carrying out and instruction of a procedure to examine the relevant asylum application and the applicants themselves. Thus, the only burden that is imposed by the applicants considers:

"(...) the competent authorities for the purposes of ascertaining the identity and the other elements referred to in Article 4, paragraph 2, of Directive 2011/ 95/EU (...) the further conditions listed by the provision referred to (...) their imposition is left to the free discretion of the Member States (...)"[176].

The formal observance of obligations ascertains and considers the first element of the abuse test, thus following as a prerequisite the conduct of the asylum seeker who considers the provision of the conditions that obtain the right to recognition of international protection as abusive.

The abused right coincides with a right that respects forms of international protection. It also implies the relative need to take into consideration the provisions regarding the validity of

175See, Directive 2013/32/UE, art. 6, par. 3.

176"(…) a) report to the competent authorities or appear personally before them, without delay or on a specific date; b) deliver the documents in their possession relevant for the examination of the application, such as passports; c) inform the competent authorities of their place of residence or domicile of the moment and of any change thereof, as soon as possible, or accept any communications at the most recent place of residence or domicile specifically indicated by them; d) consent to being searched by the competent authorities; e) consent to being photographed; f) allow their oral statements to be recorded (…)".

asylum applications. The relevant requirements for the recognition of forms of international protection are related to the existence of the reasons for the unfoundedness of the application. These are relevant mechanisms which admit the existence of the requirement of the abuse test as well as the norms of international protection[177].

Evaluation and objectives

A possible evaluation and divergence between the relative result leads to the concept of abuse in connection with the reference of the right of a procedural nature and the relative access to the examination of the asylum application. This evaluation underlines the objectives of the rules that describe the recognition and attribution of international protection which coincides with the relevant will which ensures the applications in an adequate, precise, complete[178] way. These are also conducted in an "individual, objective and impartial manner"[179]. Disappointment for such an objective occurs at the moment in which a person responds to the obligations that are imposed in art. 13 and proceeds to submit an asylum application that does not have the right to an examination.

177See the recital n. 40 of the Procedures Directive: "(...) fundamental to establish the validity of the application for international protection is the safety of the applicant in the country of origin. If a third country can be considered a safe country of origin, Member States should be able to designate a safe country and presume its safety for a specific applicant, unless the latter raises contraindications (…)".

178Recital 18 of the Procedures Directive.

179Article 4, par. 3 and 10 of the Procedures Directive.

Abuse as a behavior

One of the parallel requirements for the operation of the abuse test which faultily highlights the submission of a repeated application and the realization of a secondary movement which represents situations that integrate the presuppositions concerning the rules to access and procedures that recognize secondary movements, multiple applications, repeated applications applicable and linked to the notion of a safe country and behaviors as qualifiable and abusive, characterized in the preparation of requirements where the directives of the European legislator give access to the asylum application procedure, to recognition of the forms of protection and behaviors that imply the legislative choice as abusive. The procedural mechanisms impose and observe duties. They introduce safeguard clauses to a system that ensures the functioning relating to the unfoundedness of the requests that respond in a specific way and with certain modalities.

The conduct, that implies the mechanisms as an abusive form and at a programmatic level, has characterized and justified the procedural guarantees connected to the individual asylum applications that arise.

The submission of several asylum applications and in several Member States on the part of an applicant after having entered a

border country and moving within the territory of the union reaches a destination that aspires to greater integration opportunities of working and social nature.

The subject's conduct is described as a secondary movement and is accompanied by various multiple questions considering that:

"(...) a) this conduct does not imply the strict violation of any European provision, since there is no rule that imposes a strict ban on travel between Member States; b) at the same time, such behavior is not legitimized by any law and, on the contrary, goes against the logic of the Dublin system, based on a rigid division of competences between Member States regarding the examination of asylum applications and the management of the legal status of a specific asylum seeker (principle of single jurisdiction); c) the applicant, by submitting a second asylum application in a different Member State, has not artificially pre-established the requirements for accessing the asylum application, but has simply engaged in behavior that is opposed by the system, as it is considered "abusive" (…)"[180].

This is a logic that responds to other abusive conducts that take asylum policy into consideration in the context of the abuse of European law.

The notion of "safe country of origin", "country of first asylum" and "safe third country" and the proper operation of these notions take into consideration the safety of the third, European state where the applicant has obtained the relevant asylum as imply from a procedural point of view:

"(...) a) the applicability of the accelerated or border procedure, in the case of origin from a "safe country of origin" (article 31, par. 8 letter b) of the 2013 Directive /32/EU); b) a ruling of inadmissibility of the asylum application, in case of application of the concepts of "country of first asylum" and "safe third country" (article 33, par. 2, letters b) and c) of Directive 2013/32/ EU) (...) this notion can also be applied to the hypotheses of "safe transit country" due to the insufficiency of the necessary link for the purposes of the applicability of the hypothesis of inadmissibility of the application (...) the

180Article 4, par. 3 and 10 of the Procedures Directive.

mere transit through a safe third country cannot be considered a sufficient criterion to make a reasonable presumption that the applicant will return to that country[181] (...) concerned with specifying that, in light of respect for the right to an effective appeal against a decision of inadmissibility of the asylum application, the provision of a period of eight days, granted to the judge to rule on the applicant's appeal, is not adequate (...)"[182].

In the D. and A. case[183] it was underlined:

"(...) the reasonable deadline that must be respected in completing the accelerated procedures and/or carried out at the border or in transit zones (...) the citizenship of the applicant asylum is an element that can be taken into consideration to justify the priority or accelerated processing of an asylum application, but the establishment of a priority procedure (...) must fully allow the exercise of the rights that the Directive in question confers on asylum seekers (…). It must be given sufficient time to collect and submit the elements necessary to support their applications, thus allowing the determining authority to carry out a fair and complete examination of such applications and to ensure that applicants are not exposed to dangers in their country of origin (...) Member States may exceed the deadlines that are necessary to ensure an adequate and complete examination of the application for international protection (...) considering an application for international protection of an asylum seeker from a country that can be defined as safe, if the Member State responsible for examining the relevant request has not adopted specific internal rules for the implementation of the concept of "safe country of origin" (...)"[184].

In the Ilias and Ahmed v. Hungary case[185] the ECtHR have verified the nature of the obligation that the third country is a safe country without violating the principle of non-refoulement

181CJEU, C-564/18, LH-Bevándorlási és Menekültügyi Hivatal (Tompa) of 19 March 2020, op. cit.

182CJEU, C-564/18, LH-Bevándorlási és Menekültügyi Hivatal (Tompa) of 19 March 2020, op. cit., par. 77 and 73: "(…) since it cannot be excluded a priori that a deadline of eight days is adequate in the most obvious cases of inadmissibility, it may prove, in certain circumstances (…) materially insufficient to allow the judge hearing an appeal against a decision rejecting an application for international protection as it is inadmissible to ensure respect for all the rights mentioned (...) for each of the cases submitted to its examination, and thus guarantee the right to an effective remedy of applicants for international protection (...)".

183CJEU, C-175/11, D. and A. of 31 January 2013, op. cit, parr. 73-75.

184CJEU, A, op. cit., par. 35.

185ECtHR, Ilias and Ahmed v. Hungary of 21 November 2019, par. 129.

to presume safety by reiterating that:

"(...) the duty not to remove asylum seekers, in the event where there are substantial reasons to believe that such an action may expose them directly (in the third country of destination) or indirectly (for example, in the country of origin or in another country) to treatment contrary, in particular, to Article 3 ECHR (…) the assessments that the authorities are required to carry out[186], necessarily include a check on the adequacy of the asylum procedure of the country of destination, in order to avoid the applicant's risk of being subjected to direct or indirect refoulement[187] (...) removal of an asylum seeker from a contracting state to a third intermediary country without examination of the asylum requests on the merits, regardless of whether the receiving third country is an EU Member State or not or whether is a state party to the Convention or not, it is the duty of the removing state to examine thoroughly the question whether or not there is a real risk of the asylum seeker being denied access, in the receiving third country, to an adequate asylum procedure, protecting him or her against refoulement (…)" (Rainey, Wicks, Ovey, 2021)[188].

These are assessments that have established the existing guarantees that are insufficient according to Art. 3 ECtHR to imply an obligation that removed asylum seekers from third countries[189].

The CJEU followed the path of the ECtHR from the interpretative point of view in relation to the rules of the CEAS, which reconstructed the concept of abuse as a balance of

186ECtHR, Ilias and Ahmed v. Hungary, op. cit., parr. 139-141: "(…) the asylum seeker has the burden of attaching his individual circumstances which cannot be known to the national authorities, these same authorities are required to proceed on their own initiative with an updated assessment, in particular, of the accessibility and functioning of the asylum system of the receiving country and of the related guarantees concretely ensured in that state. Instead, there is a presumption of knowledge regarding general shortcomings of the receiving state, which are adequately documented in authoritative reports, such as those of the UNHCR, the Council of Europe and the European Union (...)".

187ECtHR, M.S.S. and others v. Belgium and Greece, op. cit. par. 358; Sharifi and others v. Italy and Greece of 21 October 2014, par. 30.

188ECtHR, Ilias and Ahmed v. Hungary, op. cit.

189ECtHR, M.K. and others v. Poland of 23 July 2020; D.A. and others v. Poland of 8 July 2021; T.Z. and others v. Poland of 13 October 2022.

political and then legal interests at a higher value of factors which were different in abusive cases because need to provide greater security in respecting non-refoulement as an effective right where the protection of family law comes first and must be protected. These are considerations that have relevance in general terms and represent a trend in jurisprudence that considers additional and different values in the fight against abuse that interpret the consequences that apply the rules justifying the anti-abusive ratio.

International protection as a substantive norm

The relevant cases referred to a concept of abuse concerning the right of the Qualification Directive related to the refugee status where protection is subsidiary and based on an international protection concentrated on a concrete place, as the cause of the relevant events resulting in the person leaving the country of origin. These are eventualities, where according to art. 5 which introduced Directive 2004/33/EU in the proposal of the Commission of 2001[190], took into consideration the Geneva Convention defining the refugee who does not distinguish from

190Directive provided from Art. 20, parr. 6 and 7 della Directive of 2004 which affirms that: "(…) status obtained through activities carried out for the exclusive or main purpose of creating the conditions necessary for the recognition of such status (…)". Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 of 21 October 2009, Explanatory Memorandum, p. 9).

those who flee from their country and also avoids persecuting those who find themselves abroad and who will not return safely due to the related risks that are present in their own country (Hathaway, Foster, 2014)[191].

The need for international protection "sur place" is the same with the hypothesis for protection that occurred in the country of origin during the absence of the interested party. In such a case the need for international protection is configured and the result of the conduct has to do with the interested party who leaves the country of origin. The first paragraph of art. 5 refers to the relevant fear that is well-founded, haunted by an actual risk of suffering serious harm which is based on:

"(...) events occurring after the applicant's departure from his country of origin, including all events arising independently of any activity subsequently undertaken by the applicant himself (...) events must be taken into consideration for the purposes of the applicability of the provision, allowing to attribute relevance to changes that have occurred within the country of origin (...) They have revolutionized the socio-political situation and the intensification of a situation of instability already partly present within the country, but not originally such as to represent a real threat to the interested party (...)" (Hathawayy, Foster, 2014).

Art. 5 covers the relevant cases of fear based on persecution and the related actual risk of suffering serious harm which is causal and correlated to:

"(…) the applicant after his departure from the country of origin (…) the expression and the continuation of beliefs or orientations already expressed in the country of origin (...)".

191Hathaway, Foster affirms that: "(…) by virtue of the requirement that the applicant "is outside the state of his citizenship", or "being stateless and being outside his state of domicile", the Convention protects, on an equal footing, all persons forced to remain in outside their own country, whether they are already in a foreign country or whether they are forced to flee (…)".

These are clarifications that justify in a combined manner and as established by Art. 4, par. 3, letter. d) the Qualification Directive which relates to the elements that the competent authorities take into consideration the individual examination of the relevant applications for international protection.

The rule evaluates and carries out in practice:

"(...) the activities carried out by the applicant after leaving the country of origin have aimed exclusively or mainly at creating the conditions necessary for the presentation of an application for international protection, in order to establish if said activities expose the applicant to persecution or serious harm in the event of return to the country (...) two provisions emerges the idea that post-departure activities which do not constitute an expression or continuation of the beliefs or orientations held by the interested party in the country of origin, cannot be considered, de plano, abusive (...)"[192].

The need to recognize the person's requesting asylum right as a joint and comparable right to freedom of expression, religion and association should be consistent with the limits established by Art. 2 of the Convention of 1951 and as instruments that protect human rights. The UNHCR itself stated that:

"(...) freedoms include the right to change one's religion or beliefs, which could happen after departure, for example due to a disaffection towards the religion or policies of the country of origin, or of a greater awareness of the impact of certain policies (...) activities, therefore, must always be subject to

192 Common position of 4 March 1996 established by the Council on the basis of Article K.3 of the Treaty on European Union on the harmonized application of the definition of the term "refugee" within the meaning of Article 1 of the Geneva Convention of 28 July 1951 on to the status of refugees, par. 9.2: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=LEGISSUM:l33060&frontOfficeSuffix=%2F; UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, COM(2009)551, 21 October 2009, pp. 15-16

careful evaluation by the authority responsible for examining the asylum application, since, although they may correspond to a the abusive activity of the subject, aimed at pre-establishing a situation apparently responding to a need for protection, on the contrary, could instead be the result of a real conviction of the subject, such as to expose him to a well-founded danger of persecution or to an actual risk of serious harm (...) concept of "manifestation" referring to orientations and beliefs that could constitute a reason for persecution or serious harm for the interested party in the country of origin, suggests that such beliefs do not necessarily have to have expressed themselves in the country of origin in concrete acts, but they could also coincide with mere internal beliefs of the subject, never made explicit externally (...) which can be overcome through a careful evaluation of the credibility of the applicant (...)" (Dörig, 2023).

Evaluating requests for activities carried out by the applicant who is abroad are considered as post-departure requests where the attention focuses on the activities carefully reach the authorities of the applicant's country of origin and the risk may be sufficient and serious based on convention grounds[193]. For this reason the applicant's hypothesis develops and convinces from a political point of view that the regime that was established in the country of origin has a well-founded fear of persecution when the state tolerates behavior on the part of its citizens. Moreover, it is added that art. 5, par. 3 at a general level establishes that Member States:

"(...) will not normally recognize refugee status to an applicant who has submitted a subsequent application if the risk of persecution is based on circumstances determined by the applicant himself after departure from the country of origin (...) an optional provision, which not all Member States have decided to transpose into their national laws, and which reflects the need to prevent any abuse by asylum seekers of the possibility of submitting an application of international protection due to a need that arose sur place (…)".

193Hathaway, Foster affirmed that: "(…) it is sufficient to attach circumstantial evidence, as it is impossible for the applicant to provide direct proof of such knowledge (…)".

The Council in the common position of 4 March 1996 addresses that if the manifestation of the interested party's beliefs clearly has as its main aim the creation of the conditions for admission to refugee status, his activities cannot in principle earn him recognition of this status, without prejudice to the right of the interested party not to be returned to a country where his life, physical integrity or freedom are in danger.

It must be considered that if the citizen of a third country demonstrates a well-founded fear of being persecuted or a real risk of serious harm due to circumstances created after his entry into the host country, neither the Geneva Convention on refugees nor any other instrument of international law that recognizes asylum allows this right to be denied by virtue of an alleged fraud carried out by the interested party (Battjes, 2015).

The provision which refers to repeated applications is applied in the validity of the Qualification Directive of 2004 as it refers to the first applications[194]. The rule takes into consideration the Geneva Convention[195] and explains that the subject of interpretation excludes the refugee status of people who

194Report from the Commission to the European Parliament and the Council on the application of Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third-country nationals or stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of recognized protection, COM(2010)314 final, 16 June 2010: https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:304:0012:0023:EN:PDF

195Article 5, par. 3 of the qualification Directive.

demonstrate a well-founded fear of persecution and activities that expose the risk of persecution to serious harm in the country of origin as preconceived by the needs of protection in an abusive manner (Hathaway, Foster, 2014)[196].

The risk thus makes the requester's motivations and the evaluation of the validity of the request excessively available (Peers, Moreno-Lax, Garlick, Guild, 2015)[197].

The authorities who evaluate and examine the relevant asylum applications come to the relevant conclusion that the post-departure activities justify the fear of persecution and the risk of serious harm:

"(...) a) such activities are the expression and prolongation of beliefs already

196Hathaway, Foster, affirmed that: "(…) an individual takes action in line with international human rights norms-including choosing to remain abroad or to seek asylum-her conduct should not be stigmatized as amounting to no more than an inappropriate and self-induced risk of being persecuted (…) no basis to characterize such claims as unattractive, much less as inappropriate under the terms of the Convention (…)". UNHCR comments on the European Commission's proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification and status of third country nationals or stateless persons as beneficiaries of international protection and the content of the protection granted, COM(2009)551, 21 October 2009. According to UNHCR's: "(…) the "sur place" analysis does not require an assessment of whether the asylum-seeker has created the situation giving rise to persecution or serious harm by his or her own decision. Rather, as in every case, what is required is that the elements of the refugee definition are in fact fulfilled. The person who is objectively at risk in his or her country of origin is entitled to protection notwithstanding his or her motivations, intentions, conduct or other surrounding circumstances. The 1951 Convention does not, either explicitly or implicitly, contain a provision according to which its protection is unavailable to persons whose claims for asylum are the result of actions abroad (…) "without prejudice to the Geneva Convention" in Article 5 (3) would require such an approach (…)". Contra the: COM(2016) 466 def., op. cit., p. 32.

197Peers, Moreno-Lax, Garlick, Guild noted that: "(…) exception contained in article 5, par. 3 would be in contradiction with the jurisprudence of the Court of Justice relating to the notion of persecution, according to which refugees cannot be expected to exercise self-control regarding their religion and sexuality-and, probably by extension, also their opinions policies (…)".

manifested in the country of origin by the applicant himself or are objectively the consequence of his personal characteristics which can lead to the recognition of refugee status or subsidiary protection (and, in this case, Article 5, paragraph 2 applies); b) these are activities instrumentally carried out by the applicant in order to pre-establish a situation capable of satisfying the criteria for inclusion in refugee status or subsidiary protection (...)" (Peers, Moreno-Lax, Garlick, Guild, 2015).

In these positions just reported there is no well-founded fear of persecution and the actual risk of serious damage which does not render and grants the form of international protection and the eventuality of the intention of the applicant where the objective needs of protection imply a recognition of their refugee status and of the beneficiary of international protection. The possibility is also admitted for Member States to deny international protection which entails the risk of people who have a well-founded fear of persecution and who also risk suffering serious damage, also excluding the forms of protection of a legal evaluation which is irrelevant and which defines a subjective way of creating the eligibility conditions for international protection[198].

Describing the related abusive conduct

The ratio of international protection "sur place" has a predominantly international legal character where according to Art. 5 of the European Commission which concerns the

198ECRE Comments on the Commission Proposal for a Qualification Regulation COM(2016) 466, November 2016, p. 15: https://ecre.org/wp-content/uploads/2016/11/ECRE-Comments-APR_-November-2016-final.pdf

Qualifications Directive reports that:

"(...) the issue of "on-site" applications based on the activities carried out by the applicant after leaving his country of origin (...) concerns the issue of the abuse of the aforementioned questions[199] (...) the asylum seeker, at a time following departure from the country of origin, could carry out activities such as to expose him, if eventually forced to return home, to forms of persecution or serious harm, such as to make it necessary the recognition of a form of protection pursuant to the Qualifications Directive (...) the possibility that such activities are carried out by the subject for the sole purpose of pre-establishing a situation which appears to be in need of a form of protection (...)" (Noll, 2006; Villiger, 2023)[200].

Article 4, par. 3, letter. d) of the Qualifications Directive is considered in collaboration with Art. 5, par. 2 and 3 of the same Directive. Art. 4 requested from states to take into consideration the possibility that the person requesting asylum determines and leaves the country of origin:

"(…) exclusively or mainly to create the conditions necessary for the submission of an application for international protection, suggests a

199Proposal for a Council Directive on rules on the qualification of third-country nationals and stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of the protection status, COM(2001)510 final, February 26, 2002, p. 16 et seq.

200ECtHR, F.G. v. Sweden of 23 March 2016: "(…) the personal interview, in fact, guarantees the interested party an effective and adequate opportunity to corroborate his/her request for international protection, and guarantees that the competent authorities carry out a careful assessment of the applicant's protection needs. It therefore becomes essential to carry out a suitable examination of the credibility of the aforementioned statements, and this is even more so with reference to asylum applications promoted due to protection needs arising sur place, which imply an evaluation of the reliability of what has been declared. with respect to the beliefs and orientations developed by the subject outside the country of origin and which could determine a risk of persecution or serious damage for the same (...)". A. v. Switzerland of 19 December 2017, par. 187. Proposal for a Council Directive on rules on the qualification of third-country nationals and stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of the protection status, COM(2001) 510 final, op. cit., p. 16: "(…) establish with reasonable certainty that the activities carried out after leaving the country of origin were undertaken with the sole aim of artificially constructing the conditions necessary to benefit from international protection, Member States are entitled to assume that such activities do not constitute, in principle, a reason for such concession and may raise serious doubts about the credibility of the applicant (...)".

presumption of abusiveness connected to such behavior, which implies, as a consequence, the failure to recognize the international protection itself (...) is subject to the provision contained in article 5, par. 3, which gives Member States the power to introduce a rule involving the rejection of asylum applications in the face of repeated applications based on circumstances determined by the applicant himself after departure from the country of origin (...) any activities implemented by an asylum seeker abroad, after having left his country of origin, can be the result of the exercise of a free expression of thought and, therefore, although not implying any continuity with the positions expressed by the same subject at home, they could however, assuming relevance from the perspective of the recognition of a form of international protection (...) that the fear of persecution or other serious unjust harm has been created does not necessarily mean that such fear cannot be well founded and therefore sufficient to justify the granting of international protection (...)"[201].

The applicant for international protection is based on persecution for the reasons that are requested by the Geneva Convention itself and on the actual risk of serious harm that satisfies the relevant requirement that is part of the asylum application as an assessment carried out concerning the existence of the danger at the moment of the same repatriation (Hathaway, Foster, 2014)[202].

Such activities are the result of an original logic and are driven by an illegal intent. The Member States are keen to carry out a

201Proposal for a Council Directive on rules on the qualification of third-country nationals and stateless persons as refugees or as persons otherwise in need of international protection, as well as minimum standards on the content of the protection status, COM(2001) 510 final, op. cit., p. 16.

202Hathaway, Foster affirms that: "(…) the reaction of the home country (in terms either of inflicting harm, or withholding protection) that is critical, the only persons whose contrived actions can give rise to a duty to provide protection are those from a state in which the basic duty to protect the security of its citizenry without discrimination is not respected (…) it really is not correct to see the assessment of sur place claims grounded in activities abroad as an invitation to abuse. To the contrary, but for the unlawful response of the home country to the contrived taunt, there would be no possibility of refugee status being recognized (…) to return a person to such a state in order to show our disapproval of "bad faith" is a gross and unprincipled over-reaction to the cynical manipulator (…)".

further adequate, complete examination according to the terms requested by the Qualifications Directive and the Procedures Directive. The assessment of the good or bad faith of the requesting party provides the competent authorities with the people who need and consider the expression of opinions of a political nature which fall within the fundamental rights which are contrary to the well-founded fear which persecutes and suffers serious unjust damage. A certain activity obtains and allows the state that is submitting the asylum application to include the authorities of a country of origin as an interested party which constitutes the relative recognition of international protection as a valid reason[203].

Evaluating and controlling illegality

The cases that concern international protection on the spot also take into consideration the abuse indicated in the relevant reference legislation where the abusive conduct allows the competent authorities for the Member States to recognize the forms of international protection, thus preparing the relevant conditions that benefits from refugee status and subsidiary protection that exposes the danger of persecution from serious harm coming from the country of origin.

Abusive conduct uses the categories that elaborate and interpret the abusive rule appropriation hypotheses as a representation

203ECtHR, F.G. v. Sweden, op. cit., par. 123. A. v. Switzerland, op. cit., par. 43.

that attempts to benefit the discipline by presenting the conditions that require its operation. Thus, Art. 4, par. 3, letter. d) of the Qualifications Directive and Art. 5, par. 3 of the same Directive took into consideration and recognized all the elements that concern the hypothesis that is part of the category:

"(...) a) the invocation of a provision of European law, i.e. the provisions of the Qualifications Directive which sanction the requirements for the recognition of refugee status and subsidiary protection; b) the obtaining of a benefit - one of the two forms of protection - in a way that conflicts with the aims and objectives of those same provisions, i.e. without there being an actual need for protection (...)".

Within this context, the abuse test is not operable and the CJEU has tried to find a solution through greater ease of application observing that the rule must take into consideration Articles 9 to 12 and 15 to 17 of the Qualifications Directive. The requirements for the recognition of one's international protection status are provided for by art. 5, par. 2. These are criteria which provide for the attribution of the status of beneficiary for international protection and the rules which call for and which identify the need for protection at a moment where the departure from the country of origin can speak of "formal observance of the rule" and which also carries out post-departure activities involving a well-founded fear that haunts and actual risk of suffering serious harm when repatriated.

The recital no. 12 of the Qualification Directive includes the legislation to:

"(...) ensure that Member States apply common criteria to identify persons who actually need international protection (...) a person should invoke the

provisions establishing the aforementioned common criteria for the purposes of obtaining a form of protection, without, however, actually needing such protection, the divergence between the result leading to the attribution to the interested party of the benefits deriving from the recognition of the right to international protection and the underlying rationale would become evident to his prediction (…)".

The abusive notion of behavior thus verifies the character of the conduct that respects the benefit that is connected with the relevant rules that are invoked. The intention regarding the activity carried out by the subject and the departure from the country of origin is investigated.

The cases of asylum in place include abusive conduct and the parameters developed attribute to the concept in these cases, highlighting that the illegal activities of the people requesting asylum are aimed at the recognition of international protection, thus explicitly representing provisions that constitute anti-abusive clauses. This is a consideration that highlights the perspective and some elusive or instrumental behaviors resulting in a narrowing operational space which prohibits elusive practices. Behaviors and practices that are investigated in consultation with the free movement of people and according to Art. 35 of Directive 2004/38/EC where the legal prohibition of abusive practices shows that the conduct operates on a general principle and the possibility of qualification as an individual abusive conduct is outside the operation of the same rule.

Terminate, revoke, renew, subsidiarily protect refugee status: description of the conduct

Articles 14 and 19 of the Qualification Directive place and take into consideration the applications for international protection that are presented since the entry into force of Directive 2004/83/EC[204]. The states thus can revoke, terminate, refuse, renew, both the refugee status as well as of beneficiary of subsidiary protection that has been recognized to a third country and/or to a stateless person by a judicial, administrative, judicial body, who has ceased to be a refugee according to art. 11 or entitled to beneficiary of subsidiary protection according to art. 16[205].

Par. 3 includes the revocation, termination, refusal, renewal of the forms of protection that had to do with interested parties who have excluded the forms of protection that are granted to them[206], as well as false documents that constituted a

204Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, OJ L 304, 30/09/2004, p. 12–23.

205See article 14, par. 4 of Directive 2011/85/EU: "(…) a) the existence of well-founded reasons to believe that the person in question constitutes a danger to the security of the Member State in which he is present; b) the fact that the person in question, having been convicted by a final judgment for a particularly serious crime, constitutes a danger to the community of that Member State (…)".

206Article 17, par. 3: "(…) should have been excluded or is excluded from qualification (…)". position which was also taken into consideration in article 14 and in article 19 which in reality took into consideration article 12 where it excludes refugee status according to article 17, par. 1 and 2 which concerns subsidiary protection. More from art. 19, par. 2 the possibility for Member States to revoke, cease, refuse the status of subsidiary protection recognizes their citizen of a third

determining factor in obtaining the relevant international protection.

The conduct of the third-country national also takes into consideration art. 31, par. 8, letter. c), d), e), g) as case of fraud given that they represent behaviors that is in conflict with the law of the Union. Fraud denies that the right and the interested party obtains a fraudulent role without the application of the abuse test and that calls for the abuse of right by proving the relative realization of behaviors that are not correct with the norm and decide for the relative revocation, termination, refusal, renewal of forms of international protection.

Reception materials after reduction and revocation

The cases of revocation, reduction and material reception conditions are part of the right of abuse in the asylum system where through Directive 2013/33/EU and especially through the recital 25 clarifies that:

"(...) abuse of the reception system should be countered by specifying the circumstances in which the material reception conditions of applicants can be reduced or revoked (…)"[207].

From a subjective point of view, the Directive includes citizens of third countries, stateless persons to request international protection in the territory of a Member State even near the

country and a stateless person of a state, judicial body to obtain the status of subsidiary protection excluding being entitled to benefit from compliance status

207Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast), OJ L 180, 29.6.2013, p. 96–116.

border where the territorial waters and transit zones:

"(...) are authorized to reside in this territory as applicants (...) family members, if included in the application for international protection in accordance with national law[208] (…) (...) those asylum seekers to whom the exceptions to the right to apply in the event of a repeated application are excluded from the enjoyment of reception measures, regulated by article 41 of the Procedures Directive, or those who fall within the scope of application of article 46, par. 6 of the same Directive (...)"[209].

The judgment of abusiveness respects the conduct of the subject and the reiteration of the request in case the behavior allows through pronouncements of manifest inadmissibility to apply the accelerated border procedures, thus excluding the enjoyment of reception measures of the responsible subjects.

The conduct represents a direct absence of the right to send the Union back to its own territory. Art. 17 of the Directive 2013/33/EU includes provisions and material reception conditions[210] where healthcare establishes the right of asylum seekers not to have access[211] and the measures demonstrate the

208Article 3 of the Reception Measures Directive: "(...) a) applications for diplomatic or territorial asylum presented at the representations of the Member States; b) cases in which temporary protection in the event of a massive influx of displaced persons has been recognised, pursuant to Directive 2001/55/EC (paragraph 3). In any case, Member States are left free to choose whether to extend the scope of application of the Directive with reference to procedures for examining applications aimed at obtaining forms of protection other than that conferred by Directive 2011/95/EU (para. 4) (…)".

209Article 4 of the Reception Measures Directive, op. cit.

210See article 2, lett. g) of the Directive 2013/33/EU.

211"(...) a) to subordinate the granting of all material reception conditions and health care, or part of them, to the condition that the applicants do not have sufficient means to guarantee them an adequate quality of life for their health, as well as to ensure their livelihood (article 17, paragraph 3); (b) to oblige applicants to bear or contribute to bearing the costs of material reception conditions and healthcare, where applicants have sufficient resources, for example where they have been employed for a reasonable period of time (Article 17, paragraph 4); (c) to accord applicants less favorable treatment than they accord to their nationals, in particular in cases where material support is partially provided in kind or where the level or levels, applied to

desire for international protection.

The law does not provide at a uniform level the reception conditions for people requesting asylum. This must be varied according to individual needs, thus requiring a quality of life that guarantees and protects physical and mental health.

Moreover, reading together the recital 11 of Directive 2013/33/EU and Art. 1 CFREU (Kellerbauer, Klamert, Tomkin, 2019)[212] underline and guarantee respect for human rights for people seeking asylum and the reception conditions outlined by the Directive. The same requirement of art. 20 admits and reduces the revocation of material reception measures ensuring health care according to art. 19. It is stated that:

"(...) an asylum seeker (cannot be) deprived - even for a temporary period after the submission of an asylum application, and before he is actually transferred to the competent Member State - of the protection conferred by the minimum standards dictated by the (...) Directive (on reception measures) (...)[213] any decision aimed at reducing or even revoking such measures cannot leave the applicants in total poverty or deprive them of fundamental rights (...)"[214].

citizens, are intended to ensure a level of higher than that required for applicants under this Directive (Article 17, paragraph 5) (…)".

212The related recital affirmed hat: "(...) standards regarding the reception of applicants are sufficient to guarantee them a dignified standard of living and similar living conditions in all Member States (...)".

213CJEU, C-179/11, Cimade and GISTI of 27 September 2012, ECLI:EU:C:2012:594, published in the electronic reports of the cases, par. 56. the judges of the Luxembourg are based on Directive 2003/9 as valid for the recast Directive and introduced as an amendment that respected the objectives that persecuted the preparation of minimum standards regarding reception measures.

214Article 18, par. 9 affirms that: "(…) in duly justified cases, to exceptionally establish modalities relating to material reception conditions other than those foreseen, for a reasonable period and as short as possible, in two strictly foreseen cases: a) when an assessment of the applicant's specific needs must be carried out, in

In this spirit of logic and interpretation, the European Commission itself, when it recast the Directive on reception measures, tried to ensure that people requesting asylum can challenge decisions on the matter according to what the national judge provides[215].

In speciem, art. 20, par. 5 provided that the decisions that reduced or revoked the material reception conditions ensured certain standards of a procedural nature and especially of taking into account the situation of the person concerned, of being motivated and of respecting the principle of proportionality.

Through a preliminary ruling requested by the Italian Council of State on 30 December 2020 regarding the recognition of Art. 20, par. 4 of Directive 2013/33 and the related sanctions for violations in reception centers and serious and violent behavior, the Italian judge requested legitimacy for the imposition of a sanction having to do with the revocation of reception measures requiring seriously violent behavior outside the reception centre. The impossibility of revoking the material reception conditions and the serious facts involving physical violence due to drugs

accordance with Article 22; b) when normally available accommodation capacities are temporarily exhausted. However, this is without prejudice to the obligation to satisfy essential needs (...)".

215 Communication from the Commission to the European Parliament pursuant to Article 294(6) of the Treaty on the Functioning of the European Union concerning the Position of the Council on the adoption of a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers, COM/2013/0415 final, https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52013PC0415

could have exposed certain abuses and brought them to light.

The domestic judge tried to use the European provisions for interpretative purposes as the object of examination where the argumentative process suggested the broadening of the application of art. 20, par. 4 for the prevention of abuse in reception measures. This enlargement recognized national authorities for certain behaviors towards asylum seekers with a possible effect of abuses in the relevant system. The use of abuse presented "severely violent behavior" ahead of lawbreaking behavior and abusive conduct.

The conditions proposed by Art. 20 of Directive 2013/33/EU take into consideration the Advocate's General Campos opinion in the Haqbin case[216]. In this case it was noted that the use of the provision under investigation describes is based on the revocation of reception measures, which includes a situation in which there is an abuse of rights. The abuse of rights is part of a conduct where the applicant had shirked related obligations and international protection leaves a compulsory residence to present themselves to their authorities, thus, reiterating the relative benefit for the conditions of reception.

The conduct according to the basis of the application shows that the decision revokes reception measures which are comparable. As a consequence, the reiteration of the asylum application is

216See the conclusions of the Advocate General Manuel Campos Sánchez-Bordona presented in case: C-233/18, Haqbin of 6 June 2019, ECLI:EU:C:2019:468, published in the electronic reports of the cases.

defined, as a relative abusive behavior, which defines the subject's conduct as parameters, where the abuse test excludes the force, which is concrete and requires the examination of the asylum application constituting the relevant violations of the law that do not form abusive conduct.

Another description of abusive conduct

Art. 20 of Directive 2013/33/EU exhaustively lists some cases that include letters a) and b) of the first paragraph of the same provision[217] concerning people who request asylum as responsible for a violation of obligations under the domestic legislation. In this regard, it considers,:

"(…) a) the obligation to reside in a specific place (provided for by article 7, par. 2-4 of the Reception Directive[218]); (b) the obligation to report to the authorities or to a request to provide information or to appear for a personal interview concerning the asylum procedure during a reasonable period of time established by national law[219] (provided for in Article 13 of the Procedures Directive) (…)".

These are cases that characterize formal violations of the law, provided as a consequence of the limit access of the guarantees

217The applicant submitted in a voluntary and competent manner that the adoption of a decision where it was motivated and based on reasons having to do with the disappearance, restoration of the concession and the material reception conditions revoked, reduced and/or of a part of them.

218According to lett. a): "(…) applicants trying to hide. In any case, before this provision can be considered effectively applicable, a certain period of time must have elapsed-although not expressly defined by the Directive-which allows the actual existence of an attempt to hide by the interested party to be assessed (…)".

219Proposal for a Council Directive on minimum standards for the reception of asylum seekers in the Member States, COM(2001) 181 final, op. cit., as a time limit, the deadline of 30 days.

that are connected to the status of asylum seeker.

The situation of par. 3 of the same rule concerns that the applicant has hidden financial resources and benefits from the material reception conditions in the face of a system of fraud. He underlines the hypotheses of revocation, termination, refusal of renewal and the refugee status of subsidiary protection which thus legitimizes the exclusion from rights that are provided for by the system of the Union.

Furthermore, letter c) of its paragraph refers to a situation where the asylum seeker has submitted a repeated application and as defined by Art. 2, letter. q) of the Directive 2013/32/EU. This is a provision where the hypotheses of an asylum seeker has presented the application for international protection because his previous application was withdrew and the authority has rejected the application and the implicit withdrawal pursuant to art. 28, par. 1. A repeated application which excludes the right to reside on its territory of the Union considers this eventuality and admits the possibility of the person who is interested as benefiting from reception.

Art. 20, par. 2 establishes the possibility of reducing but not excluding[220] the relevant material reception conditions. It

220The change introduced through the recast of the Reception Measures Directive provided that Member States would refuse reception if the asylum seeker had not demonstrated that he had submitted his application as soon as reasonably practicable after his arrival. arrival in that Member State (…)". Article 16, par. 2, Directive 2003/9/EC: "(...) at the first possible moment, the applicant himself was therefore responsible (...) for the 2008 Commission proposal (COM(2008) 815 final, op. cit. he had even suggested the complete elimination of the aforementioned provision (…)":

ascertains that the applicant justifies and presents the application for international protection as feasible after the arrival of the Member State. The cases fall within the applicable provisions of the provision which vary and include the following hypotheses:

"(...) a) when a foreign citizen has entered the territory of the Union irregularly and has allowed a considerable period of time to pass before submitting an application of international protection in the state of entry; b) when the person has entered the territory of a Member State illegally, without submitting an application for international protection there, and has then moved to another Member State, where he has then made an application for asylum; c) when a foreign citizen has obtained a visa for regular entry into the territory of a Member State and has presented an application for international protection, once the title legitimizing his stay in the Union has expired (...) of conduct that is evaluated by the authorities as involving an evasive intent[221] (...) applications for international protection are presented at the border or in the transit zones of the Member State before a decision on the admission of the applicant is taken (...)"[222].

As regards the eventuality that a citizen of a third country has crossed its borders without expressing the submission of an asylum application, the relevant request is advanced to a later moment where it constitutes in itself a reason that applies art. 20, par. 2.

The conduct framed in this paragraph even in an abstract way but relating to the abusive rule appropriation in the reiterated application includes terms that attempting to circumvent the system understood as conduct where the characteristics are necessary to benefit from a specific right that is predisposed from the Union without any other conflicting purpose which respects the very rationale of the envisaged rule. Submitting the

221Recital n. 25 of the reception Directive.
222Recital n. 38 of the Procedures Directive.

asylum application at a time that is not immediately and subsequently part of the territory of the Union includes a multiplicity of situations that are considered elusive in the system, thus legitimizing those responsible who benefit from certain rights. The foreign citizen waits for a period of time to present the application for asylum as a movement that crosses the Member States of the Union, thus identifying the asylum system in an advantageous way and making the application in front of a case that frames the abusive rule avoidance in the interested subject n case that the moment that formalizes the asylum application remains in the Member State it enters the territory regularly and, irregularly in the case of abusive rule appropriation.

It is observed that the perplexities emerged in the concept of abuse refer to procedural mechanisms of the asylum system which are linked to an assimilability. In such case, the peculiarities of abusive behavior are examined many times by the CJEU itself. The reiterated questions and the behaviors they create according to Art. 2, par. 1, letter. q) of Directive 2013/32/EU need international protection and the request for recognition of protection immediately crosses the border of a Member State where the behavior and conditions do not give access to a benefit already provided by the law of the Union and the cases such as abusive rule appropriation appear to have

characteristics of abusiveness and represent behaviors where the predispositions and requirements established by the directives access the procedure for examining the relevant asylum applications as well as the recognition of international protection where the abusiveness is implicit as abusive in European legislation and in the choice of legislative policy.

Article 20, par. 2 together with a secondary movement considers the hypotheses of abusive rule avoidance to be configurable given that there is no provision in the law of the Union which expressly prohibits, especially foreign citizens in need of international protection from waiting for a certain time to present the relevant application through the territory of the union.

The provision does not allow the relevant implementation of conduct that exploits the interested parties and which benefits the asylum system of a competent Member State from the management of their asylum application. The subject and the related requirements for access to the rights provided are not simple for behaviors that are prohibited and that are considered ex ante as abusive.

In recent years, the continuous influx towards the borders, often on a massive scale, including citizens from third countries, has allowed asylum seekers to illegally cross European and non-European borders. In the M.A. case of 2 June 2022 the General

Advocate Nicholas Emiliou stated that:

"(...) a small part of the migrants would be refugees in good faith, while many others would present asylum applications in the knowledge that they are manifestly unfounded for the sole purpose of temporarily taking advantage of the guarantees linked to the status of "applicant", or even simply to be admitted to the Schengen area or, if they are already there illegally, to delay their expulsion (...)"[223].

The Procedures Directive contains a specific provision - Article 43-, which allows Member States to ensure control of the external borders of the Union, respecting the right of third-country nationals to request asylum.

Reference is made to the power granted to Member States to apply, at their borders or transit zones, specific procedures to decide on the admissibility, pursuant to Article 33 of the Procedures Directive, of the asylum applications presented therein, and even on the merits of such applications, in the cases referred to in Article 31, paragraph 8, of the same Directive - which concern, in essentially, various hypotheses in which the applicant's behavior or declarations suggest that his application is manifestly unfounded and abusive these procedures:

"a) allow Member States to carry out a "first sorting" of applications for international protection, allowing them to identify those who have submitted manifestly unfounded and abusive requests, preventing their entry; b) in the event that there are third-country nationals who have already crossed the national border illegally, they still allow the national authorities to combat any abuses by examining asylum applications in an accelerated manner and according to a border procedure (...) declared by share the position of the Commission[224] (...) procedures in the face of a situation of massive influx, in

223See the conclusions of the Advocate General Nicholas Emiliou presented in case: C-72/22 PPU, Valstybės sienos apsaugos tarnyba of 2 June 2022, ECLI:EU:C:2022:431, not yet published, par. 124.

224Proposal for a regulation of the European Parliament and of the Council

such circumstances, although, Member States have the possibility of carrying out border procedures even beyond the four-week deadline provided for in Article 43, par. 2. This involves, however, the admission of all interested citizens into the national territory, whether they are in good faith or who abuse the system (...)"[225].

The recognition of a right to international protection who has illegally entered a territory of the Union is according to the CJEU an "essential content" for the right to asylum, where the principle of non-refoulement is based on an argument that the Lithuanian government contested for a massive influx and abusive behavior that justified the deprivation of the right to ask for asylum and a principle where he rejected and considered of his own situation[226].

The contrast between asylum seekers in good faith and those who abuse the system, i.e. in bad faith presupposes that a judgment of conduct for third-country nationals arriving in its territory of the Union which implies the relative necessity to a system that needs of international protection. Good faith means legitimation and benefit from the substantial, procedural guarantees that they provide within the legislative framework of

establishing a common international protection procedure in the Union and repealing Directive 2013/32/EU, COM(2016) 467 final, op. cit.

225See the conclusions of the Advocate General Nicholas Emiliou presented in case: C-72/22 PPU, M.A., op. cit., par. 131.

226See the conclusions of the Advocate General Nicholas Emiliou presented in case: C-72/22 PPU, M.A., op. cit., par. 142: "(…) a) on the one hand, the fact that, as stated by the drafters of the Geneva Convention, refugees-including asylum seekers (…)-are often induced to enter illegally into the territory of the states in which they seek protection (…) defined, in Article 31 of the aforementioned convention, the power of states to impose criminal sanctions on them in the event of irregular entry or stay in their territory; b) on the other hand, the fact that the obligations of states to respect the principle of non-refoulement, enshrined in Article 19, paragraph 2, of the Charter, are imposed regardless of the behavior of the interested party (...)".

the CEAS.

Towards a general space of the prohibition of abusive practices in the right of asylum

Some important reference points emerge in the asylum sector, i.e. types of abusive conduct that have been identified and having to do with procedural mechanisms and substantive provisions ensuring a level of guarantees for applicants for international protection. Furthermore, the movements of a second level puts the mechanisms that regulate the system of Dublin, where through multiple applications are set up. The mechanisms of recovery and repeated applications examine accelerated procedures and leads to the inadmissibility of the application, reduces, revokes the material conditions of reception.

Equally important, the submission of an asylum application makes the concepts of "safe country of origin", "country of first asylum" and "safe third country" applicable as important points for accelerating border procedures and leading decisions of inadmissibility of the application. The submission of late asylum applications are reasons to reduce and revoke the material reception conditions and at the same time to take into consideration the international protection in place and the conduct of the interested party after he has moved away from

the country of origin and obtaining the protection excluding its recognition. Thus, the attempt is classified by behaviors where the type of conduct includes categories that elaborate and refer to concepts of abuse of rights and to other sectors of the EU, i.e. abusive rule avoidance, abusive rule appropriation, which did not have a good end.

Cases of abusive rule avoidance including secondary movements and multiple applications are elements that form part of the general use of Union law. Identifying instrumental pre-constitution as a requirement that benefits European law, i.e. an hypothesis of abusive rule appropriation, is an important basis for the policy of abusive rule in Europe. However, with limitations, the related cases that demonstrate "sur place" protection tend to benefit from the European matrix through operating conditions found in other sectors of European law.

Unauthorized behavior was also elaborated by the CJEU where it applied and highlighted abusive behavior that was difficult to be identifiable. The conduct requires explicit verification of its abusive nature and is considered ex ante. The provisions are implicitly identifiable as forms of abuse, which are regarded as illegitimate. Art. 5, par. 3 of the Qualifications Directive and the abuse test apply the provision that configures the anti-abuse clauses.

Perhaps this is why the choices of the European legislator have

been based on a system of construction where the procedural nature and the Member States have decided to create internal rules that justify the needs and abuses of the system. The concept of abuse is a behavior with its own characteristics and takes into consideration the rates of each assessment of abuse in conduct itself.

The provisions reported up to now in an indirect way pose difficulties for behaviors that evade the logic of an asylum system. It identifies a space where the concept of abuse limits the area of operation of a general principle that prohibits abusive practices. The mechanisms allow the general principle that pursues the same objectives to be considered as abusive elements that are in conflict with the law. These considerations evaluate and express side by side the general principle of abuse of law operating within the context of a European asylum system, which allows states to prevent other secondary, subsidiary instruments, as has been foreseen and respected by the relevant directives, when the conduct abusive practices by the applicants are answered and interpreted in the CJEU and the ECtHR.

Concluding remarks

Abusive conduct is now a reality in the sector of asylum policies in the law of the Union, where the cases are various and respect the functioning ratio of an internal system of the Union. Secondary movements, multiple applications often contradict the sole respect for competence and the strictness of criteria for redressing responsibilities between Member States that analyze asylum applications. The requests for asylum which are often inadmissible from individuals who come from countries that can be defined as safe and the submission of applications for international protection also respect the borders of a Member State late, where the behavior aggravates asylum systems for Member States which negatively affects the correct functioning which effectively requires international protection[227].

The reasoning of the behaviors justify the perspective and prepare mechanisms that discourage their realization as behaviors where abusive conduct is faced within the scope of the CEAS. This is a categorization based on various cases coming from the CJEU that the methods used are in contrast to logics of an asylum system and the abusive rule avoidance and abusive rule appropriation models highlight, through multiple

227Proposal for a Directive of the European Parliament and of the Council on minimum standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection, as well as minimum standards for the content of the protection granted (recast), COM(2009) 551 final., par. 1.1.

applications, mechanisms of exploitation that allow free movement within the territory of the Member States and citizens of third states are in need of international protection. Thus we note an instrumental pre-constitution where the benefit requirements determine a right now, as a principle that is part of the Union.

The behaviors that interpret illegality are contrary to and framed ex ante in certain conditions that implement the conduct that excludes its illegality and renders the substantial consequences as inapplicable, topics under further investigation of the operating rules and from a procedural point of view. Furthermore, the repeated applications for the asylum seeker are tests, new arguments that support the repeated applications that pass the admissibility screening as subjected to further examination.

Further investigation for the asylum seeker who is part of a safe third state is found in the case of inadmissibility of his application. In such a case it excludes and overcomes the relative presumption of security that is linked to a particular country, proving the existence of a risk that violates the principle of rejection when a case of repatriation is noticed.

In secondary movements and multiple applications the decisions relating to the interested parties have had the possibility of applying the reasons for the presentation of an asylum

application, admitting that those examined may be found and considered abusive given that the legislator has not achieved any effects of legal issues of a substantive and procedural nature, which are not favorable for them and have found space as a principle prohibiting the abuse of law. Denying or confirming the considerations that we have encountered through the CJEU is the topic of abuse with reference to asylum policy that turns out not to satisfy the concept of abuse in matters that are connected with the European right of asylum and to relevant considerations for abusive practices.

The CJEU accepted that the even abstract operation of the general principle for abusive practices is in balance with various interests where the right to an effective remedy affirms the prevalence of a need that is in conflict with the abuses. The continuous attempts by Member States and domestic courts to introduce provisions of a domestic and anti-abuse nature by adopting interpretation, where the European provisions combat abusive behavior in a teleological way, are assessed as incorrect with the law of the Union according to the reasoning of the provisions. In such a case the legal system of the Union justifies the same ratio and takes into consideration the provisions that bring out the relative operations, thus making a precise and concrete application of the conditions that come from a regulatory level.

The legislator has explicitly or otherwise adopted various mechanisms that contrasted the behavior of the system's reasoning that can be classified as abusive, thus anticipating the mainly political and less legal choices according to domestic needs for abuse and also codifying the mechanisms that are in contrast with such conduct. These are settings where the rules regulate general and abstract instruments that define their scope of application in a contemplative way as a series of cases where the idea of abuse is described as a typical ideal that does not have a precise correspondence with the cases realized and existing as cases where the risk of abuse arises. The attempt of Member States that have domestic interests strengthen the rules, expand, restrict their application that effectively fight abuses by operating on a general principle that prohibits abusive practices and where the right to asylum is conceived as a right to the state without preventing the Member States from adopting anti-abuse rules and consequently interpreting the anti-abuse functions.

In practice, Member States tend to prevent the way in which citizens from third countries can take advantage of a European asylum system by accessing their territory where they benefit from rights that are connected to the person requesting asylum in the face of linear behavior and reasoning of a system, where the Union implements the needs that occur at a level of normativeness that codifies the tools that implement the political

nature. Their conduct is abstracted and categorized as abusive by the legislator, thus finding greater respect for a system that needs greater highlighted relevance that justifies the difficulties that are encountered in a decisive access to asylum. In this case, the systemic deficiencies are reasoned under repeated applications after submission of applications for international protection even late and the concept of security presumes illegality, which is relative and not absolute.

The particular and general struggle does not find a balance through jurisprudence given that the judging body ensures and works towards a general, abstract rule where the needs are contrasted with abusive practices, taking into consideration the peculiar character that reveals the need to counteract the relative abuses along with other interests at the table.

The CJEU presents itself as a guarantor where it seeks to interpret European law in a correct and precise manner, thus playing the role where the general rules regulate the anti-abuse tools of a common European asylum system and guiding national interpreters to an application where specified disputes after a preliminary ruling are shown.

The CJEU does not seem to want to give any more space to the law as a general principle that prohibits abusive practices and allows for configurability in the face of the needs of protecting other interests, thus covering the jurisdictional bodies of the

Member States that guarantee the application of the law of the Union, ensuring the primacy of national law according to an interpretation offered by the judges of the Luxembourg.

The evaluation and control continues through the rules that implement the law of the Union. The limits are respected by a supranational discipline that contrasts the risk of behaviors that lead to abuse of rights with a system where the abuse of Member States are instruments that they struggle in abusive practices and are predisposed by the Union with illegitimate ways.

The political choices support the interests of the states that prevent citizens of third countries from the relative abusiveness of a European asylum system, where the anti-abuse mechanism is applied extensively and indiscriminately as a general principle of abuse of rights. There are no ad hoc solutions from a legal point of view that give the possibility to people, who need international protection to choose irregular entry and risk compromising the protection of the right to asylum.

The conditions that are foreseen by the law obtain a deriving right that pursues the law in a different way, even of a fundamental nature as the agent of a benefit that derives from the illegal practices that we have available (Gil-Bazo, 2008; Gil-Bazo, 2015).

Evaluating the legal category which is configured not so much

as a legislative point but more as a jurisprudential point is a general principle of law, imposing that abusive practices are applicable through verifications of the abuse test (Liakopoulos, 2019), which thus becomes a tool that uses and ensures any abuse to a system that is first of all optimistic in respecting the principles of legal certainty, thus implementing results that depend on the circumstances of each concrete case. The call for abuse of a common European asylum system is operationalized through compromises, where the objectives of a system recall that the sector pursues legal instruments that compose and create a regime that is able to effectively secure and protect refugees according to the principles of the Geneva Convention and thus guarantee the risks of life according to the principles of non-refoulement.

It is not easy so far to give a precise notion of the right to asylum and abuse of right starting from the general assumption that in different terms subjective perspectives are adopted to evaluate and configure the meanings of the right to asylum, which this right presents itself as prerogative and the subjects who request it are legitimized as individuals that have the right to seek asylum.

The right to individual asylum presents itself as a guarantee where the general principles of international law for the protection of the human rights of refugees and above all the

principle of non-refoulement place states before the obligation to grant asylum to those seeking it as well as recognize individuals' right to seek asylum, implying that the right accesses asylum requests by providing protection to people who show they are in need.

The rules of the CEAS allow the individual right to asylum to highlight a character which, due to the multiplicity of the relevant profiles, includes the form of substantial protection linked to a material series of procedural guarantees, which make the exercise of the right of asylum effective.

The relative behaviors of legal instruments that are part of the common European asylum system, control, evaluate, verify and identify the practices that can be included in the relevant category of asylum. The programmatic nature of the proposals lead to the relative adoption of legal instruments that create a precise system of legislation. This allows abusive conduct for secondary movements, multiple applications, repeated applications and the submission of requests, where the conditions are applicable according to the concepts of safe country of origin, country of first asylum, safe third country, i.e. applications for international protection that arrive late but respect the borders of a Member State.

The abusiveness of the behaviors is based on a jurisprudential level where the language that is used above all by domestic

judges through the preliminary ruling is interpreted by the CJEU referring to the operation of the concept of abuse according to the interpretation of the provisions of the CEAS. The behaviors have a delineated character, listed under abusive conduct, thus identifying that the law of the Union has allowed the considerations to operate the concept of abuse of rights as an abusive nature of identified behaviors which are directly framed and which conduct a hermeneutic operation mandatory of an abusive nature through the application of the abuse test.

The European legislator has determined the reasoning of an anti-abusiveness ratio by acknowledging that the Member States respect the provisions that give greater security to the functioning of the CEAS, thus highlighting the trend at a domestic level, which widens the space for applying abuse by operating on a principle general law prohibiting abusive practices. The systematic reasoning considers that the political choices made by the European legislator are identified in an implicit way, which can be classified as abusive and which set up in a specific way mechanisms, which exhaust the general principle which justifies the ratio, i.e. the battle against abuses of the system through the jurisprudence of the CJEU.

Jurisdictions at the domestic level ensure the balance of needs, where abusive practices satisfy with general, abstract terms the institutions that are analyzed and in practice can imply and

prevail the interests respecting however the objectives that are in the fight against abuse. The de iure condendo perspective considers the reform proposals for a system as aspects which, through continuous proposals, especially from the European Commission, know the malfunctioning profiles and inefficiencies of the system, thus linking the forms of abuse to mechanisms, where asylum seekers supervise the process that rethink the system that avoids the risk of betraying the goals that create a common European asylum system. The trial and the fight against the abuse of rights is still an open road and battle for the coming years. The risks are many and the flows and the fight against asylum seekers need guarantees and standards that recognize the right to asylum as a substantial challenge of the Union.

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